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Vincent L. Bradford

THE
LIFE AND WRITINGS

Hon. Vincent L. Bradford, LL.D., D.C.L.

LAWYER, LEGISLATOR AND RAILROAD PRESIDENT.

COMPILED AND EDITED

BY

HENRY E. DWIGHT, M. D., D. D.

Ἀνθρώπου ζητῶ . . . εὐρηκα.—Diogenes (Cyn).

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PREFACE.*

The late Vincent Loockerman Bradford, LL. D., D. C. L., devoted himself during a long and useful life so assiduously to doing good to his fellow-men, both by word and act, that the task of selecting from the productions of his pen those which best illustrate his character, is no ordinary one. His career as an advocate and jurist may be said to have commenced with the trial at Philadelphia, during the administration of President Jackson, of the famous mail robbers, Porter and Wilson, and to have closed with his great effort at Trenton, in 1871, in opposition to the lease of the United Railroads of New Jersey to the Pennsylvania Railroad Company. During his professional career, and especially after his retirement from active practice as a lawyer, and while he was enjoying dignified leisure in a happy home, he devoted much time to study, and often committed to writing his views on various topics of interest, both temporal and spiritual. There is presented in this volume an essay or lecture prepared by him on subjects of importance, illustrating his deep conviction of the truths of Revelation, his profound knowledge of theology, and his skill in biblical exegesis. All his productions breathe the true spirit of Christian philanthropy; and the object of the accompanying volume is to preserve some of them in a more enduring form, that his friends may refer to and ponder over them, as if again hearing the truth from those lips which ornamented whatever they touched.

The forensic discourses of Mr. Bradford from which extracts are here presented, were all made in cases of commanding public importance, involving principles of great moment to society; and that he should have been retained in such cases was no small tribute to his professional skill and eminence. A careful, well-trained, pains-taking lawyer, he was also a classical scholar of a high order, and his mind

*By the special request of Mrs. Vincent L. Bradford, this preface was prepared by D. F. Murphy, Esq., of Washington, D. C., the law student and life-long friend of her late husband. For several years Mr. Murphy has been well known and highly esteemed as the official reporter of the United States Senate.

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was broadened, and the scope of his faculties enlarged by travel, reading and observation.

The accompanying volume does not contain any of Mr. Bradford's political essays or addresses, though they were numerous, and often, at times, of great moment in the tide of public events. The changes of political circumstances in our land are such, that what was a matter of stirring moment, appealing to men's emotions and passions and interests a half, a third, or even a quarter of a century ago, is now regarded as a thing of the past, to be consigned to the Tomb of the Capulets. Mr. Bradford always took a keen and lively interest in public affairs, and was ever ready to raise his voice and use his pen in defense of those principles of governmental action which he believed to be constitutional and wise. It would, however, hardly become a memorial volume like the present, to embody speeches or treatises on matters of political difference or contention, which may be regarded as transitory.

In his younger manhood, Mr. Bradford spent some years in the then far western and newly admitted State of Michigan, where he served her people with distinction in the upper branch of the Legislature. His name is indelibly linked with much of the important legislation which gave form to the organism of that new community. While thus serving, he was the author of several acts of vital importance in the subsequent history of Michigan, among others, the act abolishing imprisonment for debt, which served as a model for similar acts in other States, and thus identified himself with a reformatory measure which has become the accepted policy of all the States of the American Union. The report with which he accompanied the presentation of this measure, as well as others of vital importance, to the Senate of Michigan, almost half a century before his death, is here reproduced.

These different productions of Mr. Bradford are submitted in the form of a memorial volume to exhibit his character, and to show that all the ends he aimed at were designed for the glory of God, the welfare of his country, and the improvement of mankind.

THE LIFE.

CHAPTER I.

Origin.—Descent.—Sketches of his Paternal Ancestors.—William Bradford, the First Printer of the Middle Colonies of America.—Andrew Bradford, his Son, Founder of the Newspaper Press of the Middle Colonies.—Colonel William Bradford, the Patriot Printer of '76.—William Bradford, Attorney-General of the United States. His Remarkable Career as Aid-de-camp of Washington—Attorney-General and Justice of the Supreme Court of Pennsylvania.—Thomas Bradford, LL.D., a Prominent Lawyer and Philanthropist of Philadelphia. Maternal Lineage. The Influence of the Loockerman Family.—Name Extinct—in the History of New York, Pennsylvania, and Delaware, References to Events and Persons of their Times Respectively.

HON. VINCENT L. BRADFORD, LL.D., D.C.L., was, like William Penn, of Batavian, as well as British, origin. His first ancestor on the father's side, William Bradford, was a printer by trade, and came to Philadelphia with the founder of Pennsylvania in 1682.

His paternal ancestors for five generations were among the most prominent citizens of Philadelphia, and some of them distinguished as patriots and statesmen in the history of our country. William Bradford, his progenitor, was the first printer for the Middle Provinces, and started the first paper-mill in Pennsylvania, contended for and achieved the "freedom of the press" a century before the case of Wilkes in the

The reader of the following memoir, who may be interested in the bibliography of its subject is referred to the following authorities, as illustrating facts and enforcing the views expressed therein :

The "Bradford Miscellany," catalogued in the Pennsylvania Historical Society; the Loockerman Family Bible, elegant crown folio (1763), in the library of Vincent L. Bradford (deceased); the New York Genealogical and Biographical Record, Vols. VI. and VII.; Address of John William Wallace, LL.D., at the 200th anniversary of the birth of William Bradford, of New York; the address of Horatio Gates Jones, Esq., on Andrew Bradford, February 9, 1869; Thomas' History of Printing, Vol. II. Colonial Records, Vol. V.; Watson's Annals of Philadelphia, Vol. I.; Westcott's Historic Mansions and Buildings of Philadelphia; "The Forum," by David Paul Brown; Preface to Vol. I. of Motley's History of the Dutch Republic; State Reports of the Senate of Michigan, 1837, 1838, 1839; Rev. Dr. Beadle's "Old and New" (1876); "or, The History of the Second Presbyterian Church of Philadelphia: its Beginning and Increase," Parkman's History of the Jesuits; Broadhead's History of New York; Dr. Griswold's Republican Court; Dr. Sands' History of the 5th Presbyterian Church.

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English House of Lords. He issued a prospectus for printing the Bible four generations before the American Bible Society existed, and finally emigrated to New York, where he became a vestryman of Trinity Church, and lived to see his son Andrew, in Philadelphia, the founder of the newspaper press in the Middle Colonies.

This Andrew was the friend and patron of Benjamin Franklin, who was introduced by William Bradford the first to his son Andrew, and worked at his "printing house in Second Street, with the sign of the Bible, where Franklin was made welcome." The office of public printer for this province was filled by Andrew Bradford, who became a member of Common Councils, a man of large wealth and postmaster of Philadelphia, which offices he retained for several years. His nephew, William Bradford, 3d, or Colonel William Bradford, a hero in three wars, lieutenant in the old French (King George's) War, or the War of the Austrian Succession; captain in the French and Indian, or Seven Years' War; and colonel in the American Revolution,—was the "Patriot Printer of 1776." He was even more than this, for, as the friend of Whitefield, he favored that eminent preacher while in America, corresponded with him, united his name and influence with the labors of the great evangelist in the foundation of the Second Presbyterian Church of Philadelphia, where his memory is still cherished with affection. He accomplished more for the political and religious welfare of his generation than most men of his day, and has deserved, by his character and career, the encomium of the Patriot Printer of '76, and a benefactor of mankind.

His son William, who was the companion in arms

of his father and brother Thomas, in the same brigade though not in the same regiment, left the classic halls of Princeton, where he obtained distinction for his elegance in English composition, and enjoyed the permanent friendship of his fellow-student James Madison, afterwards president of the United States. On the 10th of April, 1777, by ballot in Congress, less than five years later, after having studied law with Chief-Justice Shippen in Philadelphia, he was made Deputy Muster-Master-General, with the rank of colonel in the army of the United States. He became prominent in all the scenes of Valley Forge, White Plains, Fredericksburgh, and the Raritan, during the eventful years 1777, 1778 and 1779. His impaired health from exposure rendered a residence at York, Pennsylvania, necessary; but in 1779—on being admitted to practice in the Supreme Court of Pennsylvania, he was summoned, at twenty-five years of age, by the Supreme Executive Council, with one year's standing at the bar, to the position of Attorney-General of the State of Pennsylvania; an office at that time, from political causes, peculiarly responsible and arduous. In the eleven years which followed, he retained the confidence of several State administrations. His name will be forever remembered in connection with that most beneficial change in the penal code of Pennsylvania, the restriction of the punishment by death. In 1792, Governor Mifflin requested him to present a memoir to the Legislature of Pennsylvania, in which Mr. Bradford, with remarkable legal ability, reached the conclusion, "that in all cases (except high treason and murder) the punishment of death may safely be abolished." On the 22d of April, 1794, the law was

passed "that no crime whatsoever, hereafter committed, except murder of the first degree, shall be punished with death in the State of Pennsylvania."

But the talents of such a man were not to be confined to his native State. On the 22d of August, 1791, he was appointed one of the Justices of the Supreme Court. Even the honors of the Supreme Bench in Pennsylvania were not sufficient to detain him when the Father of his Country, who was personally acquainted with him during the War for Independence as his aid-de-camp and one of his military household, summoned Justice Bradford to his side. On the 28th of January, 1794, he was commissioned by President Washington Attorney-General of the United States. Among the first duties of his office was the suppression of the Whiskey Rebellion in the western counties of Pennsylvania. The correspondence and report on that occasion, in which the dignity of the Government was maintained, while conciliation was secured, were chiefly from the pen of Mr. Bradford.

The nephew of the Attorney-General was Thomas Bradford, LL. D., for forty years a prominent leader of the Philadelphia Bar, who inherited, in his later life, through his father, Thomas Bradford, printer, the larger portion of the Attorney-General's estate. The ancestors of Mr. Bradford, from the time of William Penn, had been printers in an unbroken line, and conductors of newspapers. For an entire century (1719 to 1819) they had published successively in Philadelphia *The American Weekly Mercury*, *The Pennsylvania Journal*, *The True American*; and probably no parallel in American history can be found where, in consecutive order, one family has exercised so large an influ-

ence over so wide a circle as the Bradfords exerted through the press. From December 2, 1742, until 1791, or for half a century, *The Pennsylvania Journal* was devoted with a fearless patriotism to the cause of our country during the continuance of three great wars, the old French War (1739 to 1748), the French and Indian or Seven Years' War (1757 to 1765), and the American Revolution (1776 to 1783).

Thomas Bradford, LL.D., was the youngest of three brothers, all of whom became printers. Samuel, the eldest, was a leader among men, a Grand Master of the Free Masons, the publisher of *The Portfolio*, the *Spectator* of its period, and of *Rees' Encyclopedia*; the founder of three bookstores, each in a large city; and the friend of Talleyrand, while that diplomatist was in Philadelphia. Thomas, on leaving the University of Pennsylvania, at the close of the Junior year, by the request of his father, at fifteen years of age, learned the art of printing in his father's office. At the age of eighteen, with his father's consent, he engaged in legal studies, and became a member of the bar in 1802. In May, 1805, he married Elizabeth, the eldest daughter of Vincent Loockerman, Esq., of Dover, Delaware, who died before him, April 12, 1842, and by whom he had four sons and one daughter.

In 1842, President Tyler sent the name of Thomas Bradford, LL. D., to the United States Senate as Judge of the United States District Court for the Eastern District of Pennsylvania. The Senate, contrary to all expectations, refused to confirm him, exclusively on political grounds, because Mr. Bradford had opposed in a public meeting the plan of Mr. Clay to re-charter the Bank of the United States. In 1813, Thomas

Bradford, LL. D., publicly joined, as a professing Christian, the Second Presbyterian Church, of which his paternal grandfather, Colonel William Bradford, the patriot printer, was one of the founders, and in which, while an infant, Thomas had been baptized. Under the watchful care of a pious mother, he was religiously trained, and during the ministry of the Rev. Thomas H. Skinner, D. D., associate pastor of the Second Church, he withdrew with a colony and founded the Fifth Presbyterian Church, Arch Street, west of Tenth. Of this church he was an elder for twenty years, often commissioner to the General Assembly of the Presbyterian Church, and honored by it with frequent marks of respect and confidence. For several years he was director in the Theological Seminary at Princeton, a member of the Board of Publication, and trustee of the Old School Presbyterian Church Assembly.

Thomas Bradford was an active Christian. In 1818 he was engaged, with Francis Markoe, Esq., in gathering on the east side of Juniper Street, below Walnut, "a ragged school," which for several winters they taught in letters and the doctrines of Christianity. During his rural residence in Hamilton Village (now West Philadelphia), from 1817 to 1822, he conducted public worship once or twice every Sabbath in the academy of that village; and this activity was instrumental in forming two churches of different denominations, now prominent in West Philadelphia. As far back as 1815, Thomas Bradford advocated the principle of solitary confinement, with moral and religious instruction, as the remedy for the evils attendant upon the indiscriminate association of prisoners, night and day, and labored to promote its adoption by

the Legislature of Pennsylvania. These efforts led to the appointment of a Board of Commissioners, of which he was one, for the erection of the Eastern Penitentiary at Cherry Hill (Twenty-second and Fairmount Avenue), Philadelphia, of which he was appointed, until his death, one of the inspectors, by the Supreme Court of Pennsylvania. For forty years, he was the "Prisoner's Friend," and expressed with earnestness his conviction that the gospel of Christ, accompanied by the agency of the Holy Spirit, was the only power to reform men, and that solitary confinement, or any other penitentiary discipline, were powerless without these aids. Prior to the transfer of the prisoners to Cherry Hill, Thomas Bradford was a member of the Board of Inspectors of the old Penitentiary at the corner of Sixth and Walnut Streets.

As a corporate member of the American Board of Commissioners for Foreign Missions at Boston, and as a founder of the American Sunday-school Union, Mr. Bradford's religious activity shows a wide-spreading charity which embraces Christians of all denominations. On the twenty-fifth day of October, 1851, he passed away, loved and honored by all who knew him. His beloved wife, and partner in life for thirty-seven years, had been taken from his side nine years previously. He was beloved and venerated in the church, at the bar, and in all the walks of private and public life.

Such was the paternal ancestry of Vincent L. Bradford. His maternal lineage dates back to the foundation of the colony of New Amsterdam (New York). The first ancestor was Govert Loockerman, who came over with Vouter Van Twiler, governor of the New Netherlands, in April, 1633, from Holland, and married Maria Jansen (daughter of Roelf Jansen and Anetetje Jans),

and thus was brother-in-law of Oloff Stevenson Van Courtland, whose son founded the Van Courtland Manor, in New York. He held high civil and military offices. Govert Loockerman died in 1670, leaving five children: 1. Elsie; 2. Cornelis; 3. Jacob; 4. Johannes; 5. Maritjie. Elsie married Cornelis P. Vandexven; and for second husband, Jacob Leisler, the martyr patriot of New Amsterdam. Maritjie Loockerman, daughter of Govert Loockerman, married Balthazar Bayard (step-son to Governor Stuyvesant), and had children: 1. Anna Maria Bayard, who married Augustus Jay (grandfather of Governor Jay); 2. Arietta Bayard, who married Samuel Verplank; 3. Jacobus Bayard, who married Hellegonda DeKay; 4. Judith Bayard, who married Gerardus Stuyvesant, grandson of the last Dutch Governor, Peter Stuyvesant. There are no families more prominent than these in the history of the Empire State.

Jacob Loockerman, the son of Govert, was born at New Amsterdam, in 1650, and married, January 29, 1677, Helena Ketin. About 1681 he emigrated to Eastern Maryland, and died August 17, 1730. His son Nicholas, born November 10, 1697, married Sally Emerson, daughter of Vincent Emerson, in 1721, and died March 6, 1769, leaving one child, who was Vincent Loockerman, and was born near Dover, Delaware, in 1722, and married, as his second wife, Elizabeth Pryor, daughter of John Pryor, of Dover, February, 1774, who had two children, Elizabeth and Nicholas. Elizabeth Loockerman, his daughter, born December 23, 1779, married Thomas Bradford, LL.D., of Philadelphia, and thus became the mother of Vincent L. Bradford, the subject of this memoir.

CHAPTER II.

His Birth.—**Childhood.**—Some Persons who were then Prominent, and Some who were Not.—A Bird's-eye View of Philadelphia in his Boyhood.—His Precociousness.—Early Familiarity with the Doctors in the Temple, and their Doctrines.—His Schoolmasters and School Training in Classical Learning, and its Effect on Character.—His University Course, and its Honors.—Home Life.—Ministry of Rev. Thomas H. Skinner, D.D.—His Edwardean Theology.—Strength and Influence of the Fifth Presbyterian Church.—Visit of the Marquis de Lafayette. His Salutatory Address to that Noble Guest.—Student at Law.—Admission to the Bar of Philadelphia.—His Marriage.

VINCENT L. BRADFORD was born in the old city of Philadelphia, September 24, 1808. His childhood and youth were spent, with short periods of recreation in summer, between South and Vine Streets, and between the Schuylkill and Delaware. The family occupied three residences, Sixth below Chestnut, west side; Spruce, west of Sixth, south side, and for forty years, 705 Sansom Street. When he was five years old his father united, by profession of his faith, with the Second Presbyterian Church, and, when Vincent was ten, led out a colony from the Second, which became the Fifth Presbyterian Church. The early influences which moulded his childhood were most favorable in Church and State.

Great changes have occurred in Philadelphia since that day, but there is great reason to doubt whether the moral and religious training of our children is more desirable than in that era. If we compare dates, history informs us that during his youth George IV. was King of England, and Queen Victoria was not born; that Napoleon the Great was a prisoner at St.

Helena, and that James Monroe was President of the United States. Such men as John Randolph of Roanoke, Henry Clay and Daniel Webster, were stars of the first magnitude in the political horizon.

Abraham Lincoln was a lad working on a Western farm and Horace Greeley, as a mere boy, in Vermont. Farragut was a young midshipman, Charles Sumner was at school in Massachusetts, and James A. Garfield did not exist. The history of literature informs us that in England Robert Southey was then the poet laureate, while Byron, Campbell, Coleridge, Hood, Moore, Scott, and Wordsworth were active with their pens in prose and poetry: in America, that Washington Irving had already acquired a European fame, that Edward Everett was favorably known by his brilliant lectures on Grecian Literature and Art, that Bryant and Longfellow were youthful writers, that Emerson was scarcely known, and that the historians Prescott and Bancroft were preparing the materials for works which are the perpetual monuments of their industry.

Cotemporary records assert that at that time Philadelphia had a population of one hundred and twenty thousand, and the United States but ten millions; that only one side-wheel vessel, propelled by steam and sails, had then crossed the Atlantic in twenty-six days, and that there was not a railroad in the world. We learn that Philadelphia at that period (1808 to 1825) was a primitive city; that it took fifteen hours by stage-coach to reach New York, and as many days to arrive at Pittsburg as it now takes to reach Liverpool; that anthracite coal was not introduced into Philadelphia until 1820, and the Fairmount water until 1822. From Penn Square, as one looked over Market Street towards

West Philadelphia, there were simply fields; down Broad Street, there were only a few buildings; and, even on Chestnut Street, there was no United States Mint, and only a few dwellings till we reach Seventh Street. St. Stephen's Church was built in 1820 on Tenth Street, above Chestnut. The University Buildings were on Ninth Street, the Alms House and Philadelphia Hospital on Spruce, between Tenth and Eleventh Streets, and the Deaf and Dumb Asylum at Eleventh and Market Streets. At Sixth and Walnut Streets stood the Walnut Street Prison, and the United States Post Office was on the south side of Chestnut Street, between Third and Fourth Streets. Independence Square was then the most conspicuous object in the city.

On the west side of Sixth Street, opposite the Old Court House, stood the house in which Vincent L. Bradford was born. Here, within sight of the Hall of Independence, within reach of the principal marts of trade, amid the contests of the Senate House, comitia, and forum, he passed the scenes of his childhood and youth. At the age of three years, under the instruction of his devoted mother, he could read the Bible. At six, he was reciting the Westminster Shorter Catechism with proofs; and at eight, he was accustomed to hear, at his father's table, learned debates on such topics in theology as the distinction between saints and sinners, between sinners and seekers, between moral and natural ability and inability, unregenerate praying, lay preaching, and other mooted subjects. During the meetings of the General Assembly of the Presbyterian Church, he met at his father's house, who was then a ruling elder of the Fifth Church, Arch

Street west of Tenth, such magnates in theology as Dr. Brackenridge of Kentucky, Dr. Thornwall of South Carolina, Dr. Beman of Troy, and Dr. Lyman Beecher of Cincinnati. The latter divine was another Izaak Walton, and frequently took the youthful Vincent as the companion of his piscatory sports. The abstruse metaphysics of "Old and New School" occupied their thoughts, and early developed those powers of ratiocination which afterwards shone in the forum and Senate House.

While a mere child he was sent to the classical school of Messrs. Wylie & Engles, south-east corner of Eleventh and Marble Streets, who trained many youths of promise for future influence. Rev. Dr. Samuel Brown Wylie, the senior instructor, was a Scotch-Irish Presbyterian clergyman, subsequently pastor of the Scotch Covenanter's Church, now on South Broad Street below Spruce. The influence of that excellent clergyman in stimulating Vincent's acquisitions in the ancient classics and mathematics had an important bearing on his usefulness as a public man. In all probability, without his thorough course in the classics he would never have been the first scholar in his class at school, or won the highest honors in the University of Pennsylvania, or laid the foundations of the University of Michigan, or received the degrees of LL.D. and D.C.L. in old age.

Among scholars, there can be no doubt as to the wisdom of such a training. What but the memory can be employed at this early age? It is the memory which must supply the materials whereon the judgment can be formed, exercised and improved. The first faculty that must be exercised is not that of comparison and

reflection, but of memory, whereby the objects and topics of future thought and reflection are to be collected. Hence, those languages which are not rendered familiar by common use; those which give us the history of mankind in early times; the history of nations, arts, sciences, customs, and opinions, which are the foundation of our own and other modern languages, should be then learned. In the school of Dr. Wylie, according to ancient discipline, "more majorum," these languages were actually flogged into those pupils who were climbing the high road to knowledge, and who were not allowed to abuse the pursuit of classical literature as a waste of time. In literature, as in music, no youth can become so perfectly alive to the beauties of composition as those whose tastes have been formed on classic models which are eminent for beauty, and which Dr. Wylie knew where to find, and to show how and why they were so esteemed.

Ross' Latin Grammar, in which there was as little English as possible, was the first and only text-book before Vincent began to read the commentaries of Cæsar. At the portals of the temple of learning the youth of that school read these ominous words:

*"Notum id sit primum, Romana juventa magistro
Sub Graio didicit linguæ rudimenta Latine."*

From this excellent school Vincent was transferred to the University of Pennsylvania, at thirteen years of age, in 1821, which was then presided over by Dr. Frederick Beasley as provost, who was Professor of Moral Philosophy from 1813 to 1828, and favorably known by his defense of Locke's system, entitled, a "Search at Truth in the Science of the Human Mind." The old University buildings, formerly at Ninth and

Chestnut Streets, originally erected for the accommodation of Congress, were purchased in 1800 for the college, and within those walls Vincent pursued his collegiate course. At home he had enjoyed the best training. The family removed with the church from Eighth and Locust Streets, the site of the first building in which Rev. Dr. Thomas H. Skinner gathered the Fifth Presbyterian Church, to Arch Street west of Tenth, where the beautiful structure, then so considered, was dedicated in 1823. Each convert entering the church as a member, either on confession or by letter, was furnished with a church manual, containing not only the Creed and Covenant, but that remarkable *vade mecum*, "President Edwards' letter to a young lady on joining the Church of Christ." With such a foundation, is it marvelous that such results followed? Under the eventful ministry of that eminent servant of God, one of the strongest, most intelligent, and useful congregations gathered, which became the hive for many churches now prominent in Philadelphia. Such families as the Bradfords', the Dales', Dulles', Darrachs', Meigs', Montgomerys', Packards', Perkinses', Wetherills', were trained and fitted for useful lives in the sixteen years' pastorate of Dr. Skinner. During that ministry Rev. Dr. William T. Dwight and Rev. Dr. Joseph P. Thompson, LL.D., were brought to a saving knowledge of the truth, and were eventually among the most distinguished clergymen of their day.

Within the same circle of influences Vincent L. Bradford felt the power of that pulpit. Frequent revivals of religion made the ministry of Dr. Skinner memorable in the ecclesiastical history of Philadelphia,

and moulded the piety of that generation. In company with his three brothers and sister, he showed his fondness for his pastor by regular attendance at the Sabbath-school; at the mission on Cherry Street near Eighth; in the ragged school, Juniper near Locust; in the academy at Hamilton Village, where his father, who believed in lay sermons, gathered two churches. The fruit of this training appeared in the visible union of the entire family as well as his own subsequent union with the Fifth Church on the profession of his faith when he had reached a vigorous manhood. That household were destined to eminent usefulness. The second son, Hon. B. R. Bradford, A. M., became one of the prominent men of Western Pennsylvania. The fourth son, Rev. Thomas Budd Bradford, A. M., was pastor at Neshaminy and Germantown, Pennsylvania, and resident at Dover, Delaware, during a ministry of over thirty years. The only daughter, Eliza Loockerman Bradford, one of the most beautiful and accomplished women of her day, was the wife of Rev. Dr. William T. Dwight, the honored pastor of a prominent church in New England for nearly thirty-five years. Colonel William Bradford, the third son, is well-known as a Director of Girard College and member of City Councils for several years.

This is the key to the whole history of Vincent L. Bradford's life. He was gifted with talents, but these were not merely the passive attributes of mind and heart. He came, at his birth, into close relations with devotedly Christian people, and was trained to feel, that, by affecting the religious interests of others, he could add to their knowledge and promote their happiness. He had great qualities of mind and heart by

nature, but these were so joined with energy and purpose, that great results followed a union of genius with high moral sentiments, the fruit of careful religious training.

During his Junior year at the University, the Marquis de Lafayette, the friend of Washington, and his companion in arms through the American Revolution, visited Philadelphia in 1824. Young Bradford, at the early age of sixteen, was selected by his classmates, and approved by the Faculty, as the orator for the occasion to deliver an address of welcome to their noble guest on behalf of the University. His father and great uncle, the Attorney-General, were distinguished for their brilliancy and eloquence in persuasive address. He had made good use of his privileges as a member of the Philomathean Society in public debate, and was well qualified, by his youthful beauty and his fine scholarship, to make an admirable impression on the nation's guest. Those who heard his welcome and the reply of Lafayette, describe the scene as ever memorable in the history of the University. In his address he showed that moral truth unfolds the deepest mysteries of our nature, and lifts the finite into a living union with the infinite; that it gives character to life, and crowns the last analysis of science, both physical and metaphysical, while it clothes the Deity himself with his sublimest glories. It appeals not alone to reason, but to the strongest motive energies of our being. It penetrates the inner fortress of the will, and stirs the soul to its intensest activity. It forms the very life of philanthropy and patriotism, so well illustrated by the character and career of their honored guest, the Marquis de Lafayette.

The following year, 1825, Vincent L. Bradford received the highest honors of his class. His companion and schoolmate, Henry Reed, afterwards Professor of English Literature in the same university, who perished in the ill-fated Arctic, was also his college classmate, and shared with him these honors. Though rivals in college, they were intimate friends in social life, and subsequent fellow-students in law. While Mr. Reed entered the office of John Sargent, Esq., Mr. Bradford commenced the study of law in the office of his father, Thomas Bradford, LL.D., and was admitted to the bar of Philadelphia, April 5, 1829. In July of the preceding year he received the degree of A. M. from the University of Pennsylvania. Within two years after his admission to the bar, he married Juliet S. Rey, of the Island of St. Martins, West Indies, July 21, 1831.

CHAPTER III.

The Eminent Lawyers of Philadelphia in 1830.—High Standard of its Courts of Justice.—A Cause Célèbre.—The United States *vs.* Porter and Wilson.—Statement of the Case.—Counsel for Wilson.—Argument in Full.—Success in the Final Release of Wilson.—A Civil Suit.—Levering *vs.* The Germantown and Norristown Railroad Company.—A Contest with a Monopoly.—Eight Years in Court.—His Client Finally Wins.

PHILADELPHIA, during the first quarter of this century, attracted a large portion of the legal talent of this country, because it was near the centre of its population, and the city in which were convened the councils of the several colonies, and the seat, afterwards, of the Federal government. Here such eminent men as William Tilghman, Thomas McKean, Francis Hopkinson, Jared Ingersol and Alexander J. Dallas had elevated the tone of the bench and bar by the ease and dignity with which they conducted the trial of causes during the latter half of the eighteenth century. Their mantle, during the first quarter of the nineteenth century, had fallen upon Horace Binney, Charles Chauncey and John Sergeant, who were the great lights of the forum when Vincent L. Bradford began his legal career.

Among the *causes célèbres* in the courts of Philadelphia, the case of the “United States against James Porter, *alias* James May and George Wilson,” indicted for robbing the Reading mail and putting in jeopardy the life of its carrier, excited deep interest in the proceedings of the United States Circuit Court. Six bills were found against the prisoners, and a separate trial

was finally ordered for each. George Wilson was charged with deliberately planning an atrocious crime, coolly preparing deadly weapons for its execution, committing the crime in the dead of night; thereby robbing and plundering the mail, threatening the driver's life with pistols directed at his person, with the intent to execute the crime. Surely such a case might appal the greatest enthusiast of the forum in the cause of philanthropy, but Vincent L. Bradford, at twenty-one years of age, and scarcely of one year's standing at the bar, entered the lists as defendant's counsel with such lawyers as Henry D. Gilpin and George M. Dallas, who were the counsel for the United States. A fair account of this remarkable trial should embrace not only the indictments in full, but the thorough and searching examination of the witnesses, especially the cross-questioning by the defense, in which Mr. Bradford's remarkable powers in reaching the true relation of his client to the crime were displayed and which probably eventually saved his life, while Porter, as principal, was hung; but our limits will allow us only to give his speech in defense of Wilson, which exhibits, for a young lawyer, at his age, marvelous acquisitions in the citation of cases, great thoroughness in dealing with the testimony, which would do honor to any of his cotemporaries, and which at length made him so dangerous an antagonist in civil as well as criminal trials.

ARGUMENT BEFORE JUDGES BALDWIN AND HOPKINSON.

MR. V. L. BRADFORD, for the prisoner, addressed the Court and Jury, and observed:—"It was the saying of Terence, as much distinguished, in the most glorious days of Rome, for the benevolence of his philanthropy,

as for the elegance of his learning, and the power of his persuasive eloquence," that "whatever was a concern of his fellow-man, ought to be regarded as the interest of each individual." Inspired by the spirit of this noble sentiment, Cicero afterwards exultingly boasted in the forum, that it had been much oftener his province and privilege to defend than to prosecute. The heart of civilized man in every age and under every institution, instinctively responds an acquiescence in the philanthropy and beauty of these expressions. But if, under the uncertain and arbitrary laws of a republic, swayed by passion, intrigue, and violence, there was still a living principle of compassion for the weakness and error of frail humanity, which animated the Roman orator in the discharge of duty, and overcame the prejudice of a heated and turbulent people; how emboldened and encouraged should be the spirit of the American advocate who *knows*, that in the community in which he lives, the interest of every man is recognized to be the interest of his fellow, and that while he protects his fellow-citizen, he is practising upon principles which are the honor and safeguard of his country.

As one of the Counsel for the prisoner, I therefore feel confident in the conviction, that your unbiassed and dispassionate regard, will follow my exhibition of the case of the prisoner. I remember, that I address a jury composed of twelve honest and intelligent equals—fellow-citizens; men taken from the bosom of a community, whose enlightened benevolence is most highly evidenced in a mild and judicious penal code. I am before a court and jury freely breathing the purified and benign atmosphere of my native state—before a tribunal, whose temple is not erected in a place of

skulls, nor cemented in the gore of its victims. My voice when it calls upon this court and jury to be tender of human life, does not sound a strange and discordant note within these halls, consecrated to an administration of our humane and admirable system of Pennsylvania jurisprudence. I know the cry of an excited populace around you, is for blood ! but, however, the torrent of popular prejudice at present may swell, and roar, and rage against the prisoner, there is still that in the public sentiment and public feeling that will eventually control this effervescence, and decide dispassionately upon the deserts of the prisoner. To your firmness in this crisis of his fate, the prisoner now looks for the barrier to repel the angry billows, and restrain their fury. In the verdict of this jury, he looks for the oil to calm the wave. Justice is never violent, never sanguinary. It foams not—frets not. It is ignorant zeal which thus exhibits itself.

In behalf of the prisoner, I would therefore approach still nearer your jury-box, and, like the persecuted of old, take refuge from unrelenting pursuit in the sanctuary of justice. I seek a presence hallowed by the occasion which creates it. I remind you, gentlemen of the jury, that you have assumed a most responsible office. You are here exercising an high attribute of Heaven. You have the life of a human being in your hands. To you are committed, not only the arbitration of the life, which perisheth, but the eternal destiny of the prisoner. I conjure you then to pause and reflect ; to weigh consequences, to take sure heed, that unadvisedly you take not that away, which you neither gave, nor can restore. Act fearlessly and justly, but ever with the remembrance of this fact before you, that the life of this

prisoner, if taken through your verdict, will on the day of account be required at your hands.

George Wilson, the prisoner at the bar, is a youth of not more than three or four and twenty years of age. Public opinion has held him up as a monster. Look at him—he is not of gigantic proportions—of savage aspect—not of “such frightful mien, as to be hated, needs only to be seen”—he is a mere man—a young man, whose years have not been enough to make him that accomplished villain which he has been represented. Look at him again—scrutinize him if you please. He is neither a caged tiger nor a fanged serpent—he has no eye which blights on whate’er it falls. He comes before you, gentlemen, having suffered a solitary confinement of three months, with subdued spirits and a broken heart, waiting in trembling anxiety the result of that verdict which may destroy soul and body; or by giving time for that repentance which is incumbent on all,—save both.

The indictment under which he is charged, is framed, as is alleged, in conformity with the provisions of the 22d section of An Act of Congress, passed in 1825, for regulating the Post Office Department (*vide* 3 Story’s Laws, p. 1992). [Here Mr. Bradford made some technical comments upon the indictments, explaining the natural tendency of the several counts.] I here spread before you the indictment and the act of Congress, and invite you to compare them (as is your undoubted constitutional right), and be satisfied that they agree. Because there is no principle of law more clearly settled, than that the Indictment which is proposed to you, for adoption as the form and expression of your verdict, should pursue the very words of this highly penal

statute. In the course of subsequent remarks, I may have occasion to notice some discrepancies therein. The prisoner at the bar is then by his counsel arraigned to answer for : 1st, Robbing the Carrier of the Mail, under the circumstances as specified, and 2d, for effecting such robbery, placing the *life* of the carrier *in jeopardy*, by the *use* of dangerous weapons. The penalty affixed to the first charge, by the act, is imprisonment from five to ten years. The penalty attached to the second is *Death*. The greater, or capital offence, includes the less. The district attorney, by this indictment, goes for the whole, and asks it at your hands against the prisoner a verdict of guilty of that offence which can only be expiated by an ignominious death. But at the same time, gentlemen, you will be instructed by the court, that you may under this indictment pronounce the prisoner guilty only of the lesser offence, viz., Robbery of the carrier of the mail. The motives for the expression of such a verdict I shall now briefly present to you, and urge upon your solemn consideration.

The defence of the prisoner is addressed mainly to the capital charge, and it is to that most seriously and truly he pleads "*not guilty*." Both upon the law and facts of this case, it is your province, your prerogative, to decide, and for that decision you are responsible; such responsibility may not be shifted on another, not transferred to the court. You, and you alone, in the sight of God, are empowered and are called on to say, whether under the law and facts of this case, the institutions and interests of the country you represent, demand the sacrifice of the life of a fellow-citizen. You will listen to the court's opinion what construction the

law should receive, with respect, but you are not bound thereby. Here Mr. Bradford cited to support his position—*Vanhorne's Lessee vs. Dorrance*, 2 Dallas, 304. *State of Georgia vs. Bradford*, 3 Dallas, 4. *Bingham vs. Cabot et al.*, 3 Dallas, 33.

The junior counsel for the prosecution, in his opening stigmatized the character of the prisoner with every feature of atrocity, and exercised his fancy with sketching a life of the prisoner, which is colored with the dark pencilled hue, with which he would wish to cover it, and closes it, with not one shadowy tint of that morning light of virtue, which broke in upon his sad history, and relieved, it is admitted, the canvas. But, gentlemen, although that respectable counsel assured you, that he would exhibit to you the unexampled ferociousness of this prisoner, as drawn from his whole life, perhaps you may be inclined to think with me, that the only ferocity apparent in the matter was that which marked the learned gentleman's harangue. I fear not, however, these irregular proceedings. They will pass before your minds like the idle wind which shakes not, nor disturbs that which is firmly based. Your minds, if conscientiously disciplined, will rest with satisfaction only on the broad and irrevocable foundations of truth.

In approaching to an examination of the legal meaning of that clause of the 22d Sec. of the Act of 1825, under which a capital conviction of this prisoner is sought, we cannot avoid the observation, that there is somewhat of obscurity about its phraseology. It is liable to the censure of bearing an equivocal signification. It is to be deprecated, that, like Caligula's laws, hung of yore too high for common perusal, the reading of this law is a little beyond ordinary comprehension. If

we repeat its language, "*if such offender, in effecting such robbery of the carrier of the mail, of such mail, shall wound or put in jeopardy the life of the carrier, by the use of dangerous weapons, such offender shall suffer death,*" we shall notice in the passage terms and phrases hitherto known to no other code of laws, not well defined in our own and not particularly of nice acceptation in language. The safest and readiest mode, perhaps, of discovering its proper construction will therefore be, first, according to the philosophy of law, to ascertain the cause of its enactment, the evil it was intended as a penal remedy to obviate, and consequently the spirit of the law. The critical analysis of its letter is thus made plain. Words often receive a double interpretation from a misconception of the abstract idea they are intended to convey.

1st. What, then, is the spirit of the law, as deduced from the history of its origin? By the constitution Congress is authorized to establish Post Offices and Post Roads. In the exercise of an implied expedient and therefore incidental power, Congress in 1792 first legislated upon this subject. The act of 1792, s. 17, 1st Story's Laws, p. 217, was repealed by the act of 1794, found in 1st Story, p. 332, which inflicts the punishment of death upon *robbery of the mail*, and makes no mention of the clause under consideration. Shortly after the passage of this act, a robbery of the mail was committed near Richmond in Virginia, accompanied by the murder of the driver. It came out in evidence, on the trial of the offenders, that dreading the probable sacrifice of their own lives from the testimony of the carrier, if permitted to live, they adopted and practised upon the maxim, "dead men tell no tales." The

experience of this case and the growing humanity of our penal legislation, in whose beneficent advance Pennsylvania so nobly leads the van, having about this time discovered that there is a natural and proper relation between crime and its punishment, not to be disturbed or exceeded without the penalty losing its sanction, and without becoming an inducement to the commission of crime, rather than a preventive, called the attention of Congress to this sanguinary feature of their penal code.

By an enactment in 1799, found in Story's Laws, p. 693, it was accordingly ameliorated, and the present distinction, the penalty—between the mere robbery of the carrier of the mail, and “in the case of effecting such robbery, wounding or putting his life in *jeopardy* by the use of dangerous weapons”—was first enacted. By the successive enactments in 1810, Story's Laws, p. 1447; and in 1825, before cited, maintaining the same distinction, the severity of the penal sanction was still further mitigated,—so that by the provisions of the last statute, under which the prisoner indicted for a robbery of the carrier of the mail—or a robbery of the mail, as it is commonly called—is punished only with imprisonment from five to ten years, while the latter offence of wounding or putting the life of the carrier in jeopardy by the use of dangerous weapons, continues a capital crime. Is it not a fair deduction from this brief historical retrospect, that the intention of Congress in thus altering their first enactment and erecting this distinction, was to protect the life of the driver against any attempts upon it? Is not the argument irresistible, that an inducement was thereby held out to spare the life of the driver, since a robbery of the

Mail, unaccompanied by any wounding or attempt to take the life of the driver, was not capital, but punished only by imprisonment? There was humanity, as well as policy, in such legislation. For in case of any resistance on the part of a faithful and determined carrier of the mail, it was right that the broad shield of the law should be thrown around the person and life of the public servant, and that the highest sanction of the state should like a potent, although invisible, spirit hover around and protect him. The robber who should attempt the life of an innocent carrier and superadd a murderous intent, as evidenced by an overt attempt, to his already heinous offence, certainly as to moral guilt comes within the provisions of the Divine precept, "Blood for Blood," as fully and as easily as he who, uninterfered with by an overruling Providence, succeeded in perpetrating the murder. Even a Pennsylvania Jury might be called to convict such an offender.

The intention of Congress, therefore, as thus altered, appears to be in this latter capital clause of the 22d section of the Post Office act of 1825, solely to protect the limb and life of the carrier of the mail, either in case of his resistance or in any other event. This clause relates not to the protection of the mail from robbery. That, in the estimation of Congress, had been attended to and provided for in the preceding clause. However great you may be told is the worth and importance of the mail in a national point of view, however gem-like its value, it is nothing in comparison to the value of a single immortal soul; and we are not here to question the wisdom of Congress, or to legislate in the absence of such wisdom, "*Sic lex et scripta est.*" The spirit of the law teaches that you can only be called

on to pronounce a verdict of death when it is made perfectly clear to you that a murderous attempt upon the life of the carrier was superadded to a commission of the robbery. Is it not absurd to contend that the mere circumstance of frightening a carrier, superadded to the offence of robbing him, shall raise the punishment from between five and ten years' imprisonment to *death*!—shall a man be *hung* for *frightening* another?

I purpose to lead your minds to the same conclusion by a critical examination of the phraseology or letter of the law. Although Congress has not perhaps been particularly happy in the expression of its views, yet the understanding we have just gleaned of its spirit will serve to assist us better than any other that can be adopted in coming to a clear and distinct construction of its language. Indeed, some of the language employed, when breathed upon by this spirit, will speak out most emphatically and forcibly the intent of the legislature. In no other bearing are they efficient vehicles of ideas, or anything else but unmeaning sounds, full of dangerous, subtle, and destructive traps for the unskillful and unwary. To constitute the capital offence with which we are charged, there must then have been, according to the literal requisitions of the act, *a robbery of the carrier of the mail, of such mail, effected*; and be it borne in mind, that a robbery of the carrier of the mail is punished only with from five to ten years' imprisonment. What is the offence of robbing the carrier of the mail? This robbery is a highway robbery, and we must look to the common law for its definition (*vide* U. S. *vs.* Magill, 1 Peters, 463). The definition of a highway robbery, as extracted from standard authorities, may briefly be given thus:

“A stealing or taking from the person or in the presence of another, property of some amount, *with such a degree of force or terror as to induce the party, through fear and an apprehension that his life is in danger, unwillingly* to part with his property.” *Vide* Leach, 313, *Rex vs. Hickman*—Tomlin’s Index, tit. Larceny and Robbery, III., II., sec. 6th. *Rex vs. Donnelly, Leech*, 229. *East*, P. C., 713, 715, 783. To constitute the offence of a highway robbery, it is further said, that there must be *some struggle* to keep the property, and it must *be forced* from the owner. *Vide* Leach, 324, 325, *Rex vs. Baker*. The property thus feloniously the object of robbery must be the mail of the United States or some part thereof. The present indictment only charges a robbery of the mail, and omits the words “any part thereof.” It may, when we come to the facts of the case, be necessary to notice a discrepancy between the charge of the indictment and the facts in evidence. At present, having settled the definition of the offence of robbery of the carrier of the U. S. mail of such mail to be “a stealing or taking from the person or in the presence of a regularly appointed and sworn carrier of the mail, after some struggle, the mail of the United States, with such a degree of force or terror as to induce the carrier, through fear and under an apprehension that his life is in danger, *unwillingly* to part with the mail,” we pass to an examination of the letter of the higher and *additional* crime.

We are forced to conclude that this latter crime consists of something more than is contained in the former; although coupled with the commission of the first, it enters not into it, and forms no part of it. Circumstances of aggravated guilt must be found in it that are

not found in the former. Putting the life of the carrier in jeopardy by the use of dangerous weapons, is therefore to this intent a new and distinct offence that must be superadded to the robbery thus, as above defined, before the act of Congress can ask the life of the criminal as a forfeit for its transgressions. The clause, on the construction of which we are now entering, is highly penal; and therefore, although we do not challenge it, yet, gentlemen of the jury, you are bound by the maxims of law to give the prisoner the benefit of the utmost latitude of instruction that you can imagine to be consistent with the intent of the legislature. The clause then, now before us, specifies an *act* to be committed by the prisoner, viz., putting the life of the carrier in jeopardy, and explains and designates the act by the *mode* pointed out for its commission, viz., by the use of dangerous weapons.

What, then, is the *act* or the putting the life of the driver in jeopardy? We reply, It is placing *the life* of the carrier in a state of *real imminent peril*. There must be an action of the prisoner, as in the case of wounding the driver, which is also a capital offence, although it is not an action that succeeds in producing the same effects. The words of the clause are shall *wound* or *put*. Words will not constitute the offence; an overt *act* is required. Words are evidences of *intended acts*, not *acts*. The offence does not, therefore, consist in *threatening to wound* or in *threatening to put*, but in *wounding* or *putting*. The situation in which this act of the prisoner must place the life of the carrier is pictured by the word "jeopardy," a strong term appropriately employed in this case as an able master employs strong colors to depict a scene of strong and terrible interest to convey

a distinct idea of a condition of great and imminent danger. This is a pure statutory offence. There is no code of penal law, no definition of common law, which will fix for us at once the legal meaning of this word "jeopardy." I must, therefore, introduce a short philological inquiry.

Mr. Bradford here quoted Phillips, the nephew of Milton, who derives the word *jeopardy* from the French *jeu perdu*, a lost game; Johnson, from the French *j'ai perdu*, I have lost; from Todd, French, *un jeu perdu*, a balanced chance; from another, who derived it from the French words *je perds*, I lose, or it is over with me. The English rendering of Webster is *exposure to death*, and he cites his illustration from Luke 8 c., 23d verse: *They were filled with water, and were in jeopardy*. C. J. Ingersoll, Esq., the late learned prosecuting officer of this Court, in Wood's trial, a case like to this, instituted a similar philological investigation with this, and in the course of it, becoming convinced of the truth of the position now contended for, could not recognize the doctrine which you will find advanced by the present District Attorney, and abandoned the capital count in the indictment.

To support the derivation above given, and to sustain his rendering of the word, Mr. Ingersoll there quotes from Judges 5 c., 18th verse: "Zebulun and Naphtali were a people that jeoparded their lives unto death in the high places of the field." *Vide* Wood's trial, p. 208. Johnson quotes from 2 Maccabees 16 c., 38th verse: "He had been accused of Judaism, and did boldly jeopard his body and life for the religion of the Jews." We are from the lights thus afforded us, enabled to use the word correctly in our own literary pro-

ductions, and the authors of the law had no better advantages. They gleaned from the same sources.

Permit me, therefore, gentlemen, to submit to you analogous illustrations of this word.

See yonder captive of Indian warfare, bound by his unrelenting and savage enemy to a tree. The color of his skin is not of the same hue, with the red and dusky visages that surround him. He is a white man. The contrasted pallor of his countenance is increased by exhaustion and terror. The ligaments that bind him badly sustain his sinking form. And yet he is not a coward. It is the brave only who are thus treated by those into whose hands he has fallen. He bore himself valiantly in the fight, while the bravest of his friends were shrinking from the van of battle, and retreating before the murderous fire of the foe. Foremost in the van, he exposed himself to capture, and was taken. It is not, therefore, common fear that has blanched his cheek. If your eye be not too firmly riveted upon the sufferer, let it glance for a moment aside amidst the dusky throng. Observe you not a warrior there, with his bright tomahawk upraised. His gaze is fixed on his victim. His aim is perfect. For an instant the deadly weapon glitters in the air, and then, leaving his nervous grasp, quivers in the oak within a hair's breadth of the captive's brain. For an age of terror to the poor sufferer the barbarian has been engaged in his cruel sport, and may not terminate it until in a moment of reckless caprice he closes with it the life of the insensible object of his savage hate. May not this be said to be a case of jeopardy, of real and imaginary danger?

Some of you, doubtless, remember the touching anec-

dote of that maternal instinct and tenderness which, by an exhibition of those delicately organized fountains of life, at which in our infancy we imbibe the streams of parental love and being, recalled the babe, gathering flowers on the brink of a precipice, to its bosom, and to safety. Was not the playful child, thus tottering on the brink of destruction, in jeopardy? During the late war, Col. Johnson of Kentucky, in the *mélee* of battle, encountered Tecumseh, the celebrated Indian warrior and prophet. The muscular savage felled the American to the earth, and while, wounded, he was resting on his knee, towering above him, Tecumseh raised his powerful battle-axe to finish his foe. The keen edge, whetted for slaughter, was descending on his defenceless head, when Johnson providentially drew a pistol from his belt, shot the savage, and averted the stroke of death. This was also a case of jeopardy. We say of the friend upon whose cheek the feverish hectic of consumption glows, and whose case has been abandoned by his physicians, that he is in jeopardy—and in the last but not least apposite illustration I adduce, where a loaded pistol is snapped at the breast of another with a murderous intent, we hesitate not to affirm that life was put in jeopardy.

These are strong cases, it may be said. But they are not too strong for the term, the meaning of which it has been intended to illustrate, nor too distinctly describe that act, for which the forfeit of an eternal destiny is demanded. We may and ought to measure the force of this word by the thrilling sensation it inspires, when properly used. A state of jeopardy is a state of most real and imminent danger. When life is in jeopardy, it is *mortal jeopardy*. The fear of witnesses, unless

our own well-regulated minds *thrillingly* participate in it, when the transaction is related, is no measure or indication of a state of jeopardy. Else the nervous fright of a timid woman would be as just a criterion of the existence of jeopardy, as the terror of the brave and collected mind. If juries are thus influenced in their verdicts, the guilt of criminals indicted for the same acts, will be as various in degree as are the fears they inspired; and we shall have reached a refinement in legal absurdity, and become popular with the innocents of the nursery, when we capitally punish all those who frighten people.

The phrase "*the use of dangerous weapons*" must, in a measure, depend upon the construction of the word "jeopardy." It certainly must be such an use as places life in "*mortal jeopardy*," not the mere *fear of jeopardy*. It must be such an overt act as would support an indictment for an attempt to kill. A pistol not loaded, or a loaded pistol presented, and not snapped or fired, is as harmless as a wand of straw. To say that the mere presentation of a loaded pistol without attempting to discharge it, is "*the use of a dangerous weapon*," is as absurd as to say that the exhibition of a key is a use of it. The use, I would submit to the jury, is the employment of the peculiar power or machinery of the loaded pistol, viz., of the trigger. The jury (continued Mr. B.) will not say that because there was a surrender of the mail by the driver from fear of the danger to which his life *might be* exposed, the prisoner has forfeited his life. The construction asked for by the United States is most sanguinary. It is a paraphrase too liberal for a penal statute, which should be construed literally and strictly, and always in favor of a

prisoner. The truth and common sense of the matter is this : that no man can be said wilfully to put the life of another in "jeopardy," unless he attempts to take it with an unconditional resolution to do so—when the only chance is between the means he employs to effect his purpose, and the direction of Providence.

Mr. Bradford then proceeded to cite and comment upon the cases of Alexander and Hare and Wood, as found in the pamphlet, History of the Trials. He contended, that the opinions given were used without the benefit of argument by Counsel, were the opinion of a concurrent judicature, and therefore not obligatory on this court. He contended that the opinion of Judge Washington in Wood's case was in favor of his argument, and that the construction given by Judge Duval in Hare's case did not affix the punishment of death to the act of *frightening* another.

Mr. Bradford then proceeded to comment on the testimony at some length. He remarked, that whatever was not proved against the prisoner, the law conceived to be proved in his favor. He proceeded : "We are ready to admit (what we never meant to deny) that George Wilson was one of the men who were present at the affair of the 6th of December ; that he was accessory to the fact—to the fact, I mean, of robbing certain passengers in a stage-coach ; but we do deny that he ever robbed, or had a desire to rob, the Reading mail, much less to put the life of the carrier in jeopardy by the use of dangerous weapons. The District Attorney ought, after his frequent conferences with his witnesses, to have known the facts of his case better than to indict us for a crime of which we are guiltless. He cannot, if we are correct, now ask you to convict us, in

a different manner from that in which he has chosen to indict us.

Mr. Bradford next went into a history of the robbery, giving an account of Porter, Poteet, and the prisoner. The connection of the prisoner with the two former he ascribed to the persuasion and threatenings of Porter, and commented upon the testimony of some of the witnesses, to show that the prisoner was by no means an active agent on the night in question. It was, he said, no doubt thought a most daring attempt for three men to rob eleven ! But it was not designed ; and it is certain that they never knew the number in the stage, until they had got them all out.

Upon these facts Mr. B. remarked : 1st. That there was no robbery of any carrier of the mail, since Samuel M'Crea, the alleged carrier, was not employed by any Contractor or Post Master, or any one connected with the Post Office Department. He did not engage to drive the mail, and did not take the oath required by law. 2d. That if the mail was robbed, Wilson was only an accessory after the fact, was not a principal, and therefore could not be convicted under the present Indictment, which charges him only as principal. 3d. That Wilson did not put the life of the carrier in jeopardy by the use of dangerous weapons, and concluded thus :

Gentlemen of the Jury.—You have been furnished to the extent of my poor abilities with the law and facts of the case, in which the prisoner rests his defence. My able and learned colleague who is about to follow me, will fill up with a more masterly hand the feeble sketch I have given you. He will, I trust, be more successful than I can hope to have been, in impressing upon you the arguments I have stated. I have en-

deavored most cheerfully and conscientiously to discharge my duty to my unfortunate client. Your office is yet to be fulfilled. You will in a few hours retire from your jury-box to prepare your verdict. You and the prisoner will then have passed together through the tedious and exhausting process of a public trial. You will then have his doom committed to your hands. His life will hang upon your verdict. A human being during the momentous interval of your consultations is to be made miserable or happy forever. Whilst this solemn vote of life or death is proceeding within your jury-room, the world without will be apparently as busy and careless as ever. The plans, intrigues, hopes, and fears of the gay throng will not be interrupted or disturbed by a knowledge thereof. Nature in this her happiest season, will smile upon and gladden all hearts. No mantle of despair will be flung around. Perhaps, too, gentlemen, your own views of business or prospects of happiness will not be discomposed by the duty you shall be discharging.

But, although you sit in judgment upon one whom in his early youth friends and kindred have forsaken, who has been cast by the unfeeling selfishness of some of his kind without the charities and sympathies of society—there is still one being in the wide universe, who sustains the same relation to both you and him, before whom all are equally vile, who is not indifferent. To him, the common Father and judge of all, the prisoner can approach and to him make known the sorrow of his case. The eye that observes the sparrow circling in the air, as well as the king on his throne, will be on your hearts and actions. His precept is love mercy :

"The quality of mercy is not strained;
It droppeth as the gentle dews from Heaven
Upon the Earth beneath—
It is twice blessed—
It blesseth him that gives and him that takes,
'Tis mightiest in the mightiest."

And oh! gentlemen, when that solemn hour approaches in which heart and flesh will fail, and the strength of man will be as the broken reed before the destroying tempest, the reflection that when your health and pride were high, you resisted the force of prejudice and saved the life of a fellow-being, will come as an angel of peace to your pillow, and give confidence to the parting prayer of "Forgive us our trespasses, as we forgive those who trespass against us."

Gentlemen, I ask of you a righteous verdict, and commit the case of the prisoner to God and his country."

Among the civil suits in which he was engaged at this early period of his practice, was the case of *Levering vs. The Germantown & Norristown Railroad Company*. This is one of the oldest corporations in the State, and had run its track over valuable property belonging to the plaintiff, in what is now known as Roxborough. Soon after acquiring the right of way, the company became insolvent. During this insolvency, Mr. Bradford with his family emigrated to Michigan, and remained there from September, 1835, till November, 1843, leaving the suit of Jacob Levering in the hands of his personal friend, George M. Dallas, Esq., afterwards Vice-President of the United States. It slumbered in forgetfulness for years. Meanwhile, the railroad company resumed payment, and on the return of Mr. Bradford to Philadelphia, he met by chance his old client, Mr. Levering, on the street, and asked him for the result of

his suit. "Ah!" said he, sadly, "that case is beyond redemption." "How so," said Mr. Bradford, "since the company has resumed payment?" With that remarkable versatility of mind in expedients he said exultingly: "If you say, Mr. Levering, go on, I can gain your case." "If you can," replied Mr. Levering, "I will pay you a thousand dollars." During his residence in Michigan, Mr. Bradford had held the offices of Master in Chancery and Circuit Court Commissioner. This gave him considerable experience and a wide sphere of observation in what are termed equity cases. The Legislature of Pennsylvania, long since (1836) established certain forms of equity procedure, and the judges still exercise equity jurisdiction. Before Chief Justice Gibson, Judges Burnside and Lowry, a bill of discovery was instituted, by which he forced the railroad company to uncover its secrets, and give him what the public needed, a history of their management, and on what grounds they first seized private property, and then occupied it without payment. An eye-witness describes the effect upon the bench and bar, when Mr. Bradford, in the midst of his argument, compared the Germantown and Norristown Railroad to the notorious King Ahab in the scriptural narrative, and his client, Levering, who had been deprived of his valuable possessions, to Naboth, who was robbed of his vineyard by the King's avarice. The adroitness of the method by which Mr. Bradford compelled his opponents to give him the keys of knowledge, and the boldness with which he applied that knowledge to show the injustice of monopolies in their treatment of private citizens, gained him the case.

CHAPTER IV.

Michigan in 1837.—Removal to Niles.—Unites with the Presbyterian Church.—Rev. President Alexander B. Brown, D.D.—A Remarkable Letter.—Fifty Years' Membership on Earth.—Elected to the Senate.—Act for "the Abolition of Imprisonment for Debt."—Funds the State University.—Endorses Common Schools.—Political Foresight at Twenty-nine.—Interest in the Great Railways of Michigan. Its Canals. The Sault de St. Marie.—Activity and Influence as Senator.—Act Pertaining to Real Estate.—Candidate for the U. S. Senate.—Master in Chancery and Circuit Court Commissioner.

MICHIGAN became a State in 1835. Mistress of her own legislation, and left to her energies, this portion of the Northwestern Territory,—out of which Ohio in 1802, Illinois in 1818, and Wisconsin still later, were carved—started forward rapidly in the career of improvement. Public lands were selling at one dollar and twenty-five cents per acre, and the industrious settler with moderate means could acquire for himself a clear title to his land, when guaranteed by the government. Mr. Bradford was attracted by these profitable real-estate investments, and reached the town of Niles, in the southwestern portion of the State, in the month of September, 1835. In the fall of 1837 he had become so well and favorably known throughout the upper peninsula of Michigan that he was elected to the State Senate from that large and populous district of sixty thousand souls, or one-third of the entire population of the State, at twenty-nine years of age. On leaving Philadelphia, he took letters from the Fifth Presbyterian Church, Arch Street west of Tenth, dismissing his wife and himself to the First Presbyterian Church

at Niles, then under the pastoral care of Rev. Alexander B. Brown, subsequently a Doctor of Divinity and President of Jefferson College, Pennsylvania. They remained as members of that church until November, 1843. During his membership he had charge of a large male Bible class. In March, 1884, that church resolved to celebrate its semi-centennial. On the tenth, a letter of invitation was sent to Mr. Bradford, requesting his presence with the members at their reunion. That letter, and his reply thereto, are here inserted as proofs of the deep interest which he took in the First Presbyterian Church at Niles in his early manhood; and how tender were his feelings toward that church at the ripe age of nearly seventy-six, within five months of his death! The invitation reads thus:

“HON. VINCENT L. BRADFORD, LL.D., D.C.L.

“NILES, Mich., March 10th, 1884.

“DEAR SIR:—The First Presbyterian Church, Niles, Michigan, was organized March 30, 1834. Arrangements are being made to commemorate, by appropriate exercises, its Semi-Centennial, on Sunday and Monday, March 30th and 31st instant. We hope to meet at that time most of the surviving, earlier members of the church, and it would afford us great pleasure to meet and greet you on that occasion. If it is impossible for you to be present, we would be glad to receive a short letter to be read to those who shall attend. A pulpit Bible, presented by Vincent L. Bradford, is yet in use. Yours respectfully,

“H. M. DEAN,

“J. E. HARCKER,

“Committee on Invitation.”

Mr. Bradford's reply was as follows :

“ CITY OF PHILADELPHIA,

“ GERMANTOWN, March 25, 1884.

“ MESSRS. H. M. DEAN, JAMES E. HARCKER, *Committee on Invitations of the First Presbyterian Church, Niles, Michigan.*

“ GENTLEMEN :—I have duly received your kind letter of invitation to a commemoration of the Semi-Centennial of the Organization of the First Presbyterian Church of Niles, Michigan, to be held on the 30th and 31st inst., accompanied by a request, if I cannot attend, to write a short letter, to be read to those who shall attend. Your remembrance of me as one of the earliest members of that church is peculiarly gratifying. I greatly regret that the infirmities of seventy-five and a half years of age, and the length of the journey at this season of the year, preclude a possibility of my personal attendance, however desirous I am of personally meeting you and other members of the church on an opportunity for Christian fellowship hallowed by sacred memories. My spirit is most willing, although my flesh is now very weak. Myself and wife (who is still spared to me) became connected by certificate from the Fifth Presbyterian Church of Philadelphia with the (now First) Presbyterian Church of Niles, soon after our emigration to Michigan in September, 1835, a few weeks after our first profession of faith in this city. It was in the early days of our Christian hope and love that we united our spiritual life, hidden with Christ in God, to the life infused by the Holy Spirit into a vine of God's own right hand planting, at that time only eighteen months old, as an appointed means of grace

and growth in the knowledge of Christ. In the providence of God, I was mainly induced by the social attractions of the youthful Presbyterian Church of Niles, then few in numbers, but rich in character and culture, to locate in Niles. The Rev. Alexander B. Brown (who was, I believe, the first pastor of the church), created subsequently a Doctor of Divinity, made President of Jefferson College, Pennsylvania, and while yet in the prime of his earthly ministry called to the work of his Master in his heavenly kingdom, in September, 1835, filled most acceptably and usefully the pulpit. At that time to find such a clergyman as Mr. Brown ministering to so small a congregation, in so small and obscure a village as Niles, seemed a realization of the poet's thought:

"Full many a gem of purest ray serene
The dark unfathomed caves of ocean bear."

The Rev. Alexander B. Brown, was, even at that early period of his clerical life, a very rare and remarkable man, who gave great promise of his subsequent celebrity and distinction. He was a learned, zealous, eloquent and untiring laborer in the gospel vineyard. His spirit was truly a loving spirit, and developed love in and among the people of his charge, and all who came within their influence. The whole period of his ministry in Niles was one of constant revival by the Holy Spirit's blessing upon his evangelical preaching. He seemed as he went in and out before his people and the world around him to be "always in the spirit," consequently his church was a live church; all its institutions, such as Sunday-schools, Bible classes, prayer-meetings, conferences and charities, grew and flourished. I can never forget the warmth of Christian affec-

tion which animated both the public and private religious meetings of the members of the church. The pastor's favorite hymn was, "How firm a foundation, ye saints of Lord." The manners of Mr. Brown were so frank, genial, winning and refined, as to attract every one and repulse no one. He was well read in polite literature, a sound and systematic theologian, an accurate biblicist and an admirable general scholar. "Whatever he touched he ornamented." He was emphatically a Christian gentleman of whom, in all his converse, it might be said, the love of Christ constrained him. In the most cultivated society, he was fitted to shine, lead, and influence, as well as instruct. Eternity only can reveal the value of that early gift of God to the infant church of Niles, during the comparatively brief ministry therein of Mr. Brown.

Mr. Brown was efficiently aided in his arduous labors by an able, pious and devoted eldership, who fully sympathized with him in word and work. Time and strength do not suffice to give them individually such mention as affection and memory prompt, and they merit. You have asked for a short letter, and I could fill a volume with reminiscences of the early elders and co-workers among the members of the Presbyterian Church of Niles, from September, 1835, to November, 1843, when I removed from Niles, and returned to this my native city, in obedience to filial duty. The record of nearly all of those excellent exemplars of Christian life is, I presume, ere this, closed on earth. Among such fruit as their lives bore, while I knew them, may be mentioned the Bible and Total Abstinence Societies, which, I presume, still survive to the honor of their memories and the glory of God. I may

be permitted, however, among the sainted dead to mention with affectionate reverence the names of Judge Nathaniel Bacon and the venerable Judge Green, early pillars of the church in Niles. With them as elders, ranked in marked usefulness that beloved physician, Dr. John K. Finley and Mr. Enos. I remember, as devoted brethren upholding with prayer and faithful co-operation the hands of their pastor, Bacon Wheeler, Royal T. Twombly, I. C. Laremore, Mr. Ferson, Henry B. Hoffman, George W. Hoffman, and other beloved Christian friends, the record of whose faith and patience is, and ever will be, on high.

“The church on earth and all the dead
But one communion make—
All join in Christ their living Head,
And of his grace partake.”

Yours with Christian salutations,
V. L. BRADFORD.

What a letter for one who had nearly reached threescore and sixteen years, who had been fifty years a church-member, and was within five months of that church whose names are written in heaven! How vivid his recollections of the covenant he ratified with that infant church in the wilderness, and of the members who were there united with him in a living faith! How remarkable has been the fruit of that seed sown in the family, and in the old Fifth Presbyterian Church in Arch Street, as its members were transplanted to the West!

As previously stated, Mr. Bradford was elected to the State Senate in the autumn of 1837. Large numbers of emigrants were entering the State from New York, New England and Pennsylvania. The population of

Michigan was at that time one hundred and seventy-five thousand. His district, comprising southwestern Michigan, was unusually large and populous, and contained sixty thousand souls. Among the measures introduced into the Legislature, and in which Mr. Bradford played a prominent part, were the act "abolishing the imprisonment for debt," which soon became the model for similar legislation in Pennsylvania and other States of the Union.

"It is a matter of surprise that an evil of such magnitude as indiscriminate punishment for debt should so long have disgraced the laws of almost all Christendom. While the enlightened philosophy and expanded philanthropy of the present age have been exerted in correcting other errors, this glaring wrong appears to have been almost entirely overlooked, and still remains a relic of former barbarism and cruelty. No reason can be assigned for this gross neglect but the prejudices in its favor, arising from long familiarity with the existence of the evil, and the fact that the unfortunate rarely possess friends. The period appears, however, at length to have arrived, at least in this favored land, when the sympathies of the community point to effective and immediate correction of the abuse. . . .

Misfortune is never a crime—it is the act of God and should injure no one. The wrong doer against society is neither entitled to, nor can he enlist the honest sympathies of our nature. Punishment should follow as a terror to offenders, and a praise to those who do well. Society can feel no interest, save that of protection against injury, in the just retribution due to crime. But to misfortune, which may come alike

on all in the dispensations of providence, we should be ever interested to lend the compassionate ear and helping hand. Its alleviation and succor is a peculiar social interest, for the welfare of all is bound up in the welfare of each individual of the community. To do the greatest good to the greatest number, is the intent of our free institutions, and the principle thus asserted, necessarily involves a careful provision by legislation for the interests of every citizen. To recognize any distinction between poverty and wealth, save in just remedial enactments for the relief of the former and restraint of the corrupting and exacting tendencies of the latter, is to favor the few at the expense of the many, to violate general right, and to shamefully disregard the principles alluded to. Much more monstrous is it to increase the woes of the needy, and to plunge such still deeper in misery: Yet, such is the obvious effect of imprisonment for debt, in all instances. Instead of lightening the burden of poverty by encouraging the struggles of its victim to release himself from his weight of care and want, the system of imprisonment for debt would fasten his load upon him, and doom him to bear it in helpless despair to his dungeon and his grave. As there is no philanthropy, neither is there any reason or utility in such a policy. If it is adopted as a mode of assisting the creditor, it defeats the very end it proposes to attain; since restraints of the liberty to exert himself to procure the means of payment, cannot contribute to the ability of the debtor to meet his engagements. Yea, more, his embarrassments are thereby further increased, since the daily demands of life unsupplied to himself or family are added to his other necessities. Liberty, character, health and

strength are thus affected ; and we might as well expect a man bound hand and foot to swim in deep waters, as expect him to extricate himself from the abyss of insolvency by depriving him of the natural aids to secure independence. Imprisonment for debt is, therefore, most unreasonable. Its incompatibility with general utility is equally evident. The State, as a political body, has an immediate interest in the welfare of each of its members. An interruption of the healthy functions of the smallest fibre, muscle or nerve in the natural body, occasions more or less inconvenience to the whole ; it is equally true in the body politic. More especially is it the case with a community such as ours, based upon an absolute recognition of the sovereignty of the whole people, and existing for the general benefit. Under other forms of government, where exclusive distinctions and privileges prevail, this truth is not so perceivable. There the few rule and identify themselves more intimately with the well-being of institutions framed directly for their exclusive benefit and aggrandizement. The many are there hewers of wood and drawers of water. Even then, however, it may be asserted that the convenience of the aristocracy is impaired by any abridgement of the labor of the people on which they are dependent. How much stronger, then, is the connection in this republic between individual happiness, health and industry and the general prosperity. Every imprisoned debtor is rendered a drone, to be supported by a tax upon the general labor. His imprisonment, by lessening his own means of enjoyment, detracts from the general happiness ; his loss of energy, health and character is so much taken from the general stock. And to what purpose ? To none

in the case of honest misfortune. If the unholy vindictiveness of the creditor should be gratified thereby, a positive evil is inflicted on the community in the encouragement of a state of feeling hostile to that principle of virtue which is the basis of all free institutions.

If, then, punishment for debt be neither philanthropic, reasonable or useful, why tolerate it any longer, why not effect its immediate abolition? It would seem that one common impulse ought to actuate every civilized nation at once to extirpate it from its code of laws; yet but few have attempted it. A compromise has been sought between right and wrong, between modern enlightenment and ancient prejudice, in this matter. By insolvent laws and systems of bankruptcy, an endeavor has been made to escape the irresistible conclusion that imprisonment for debt should be abolished. But these are mere palliatives and not correctives; they admit the evil, but do not destroy it. They are even inefficient palliatives, for they are accompanied with costs and expenses which those for whom they are intended are least able to bear, and their succor frequently arrives after all the rights they profess to protect have been invaded. After liberty, character, health and time have been wasted, they strip the oppressed and discharge him from a prison a bankrupt in property and happiness.

They confound too all distinctions between virtue and vice, between fraud and honesty, between misfortune and crime. They admit the accidental ascendancy of wealth in its influence on public opinion and legislation, and weaken the defences of general right. No matter how fraudulently the debt may have been contracted, no matter how many tricks or evasions

may have been practised to defeat the claim of the creditor, the dishonest fares as well under their provisions, provided he is compelled to surrender his ill-gotten possessions, as the honest but destitute debtor. Your committee do not mean by these remarks to undervalue these laws in their proper place, as measures of equal and prompt satisfaction to creditors, and of pecuniary relief to the debtor. They merely contend against their pretensions as substitutes for the measure now under consideration by them, the abolition of imprisonment for debt—and as apologies for the continuance of the present system. But it is often objected that restraint of the liberty of the debtor is a speedy mode of enforcing the claim of the creditor, and will obtain for him his rights when the fraud of the debtor would postpone, evade or deny them. This may be conceded and not affect the view now taken; for all that has been urged assumes as its basis the supposition of honesty on the part of the debtor. It is not pretended to recommend abolition of imprisonment in cases of fraud, but only properly to define and discriminate. In cases of fraud, the incarceration of the debtor should be for crime, and not for debt; for fraud is an offence against public justice as well as against private right. Things should be called by their right names when indicative of their character, and it is often by a confusion of terms as representatives of ideas that error usurps the place of truth, and sits enthroned in her stead. It is not, in the opinion of your committee, impossible to define fraud with such precision as to class it among criminal offences for all practical purposes connected with the improvement in legislation now contemplated. A contrary supposition

has arisen either from inattention to the subject in obedience to inveterate prejudice or a deliberate design to sustain the present system of cruelty and oppression. It has been, by this injudicious and oftentimes artful commingling of the two distinct and independent ideas of fraud and debt, that imprisonment for debt has been so long countenanced and tolerated, and escaped the odium it so richly merits. When separated as they should be, the hideous injustice of placing it in the uncontrolled power of an individual under the mask of civil right to assume the prerogative of public justice, and punish his fellow by incarceration, most fully appears. When it is also considered, that this is practised without hearing or trial, for no offence against social order or morality, and at the command of the worst passions of our nature, the mind recoils with horror from the contemplation.

The worst features of Algerine slavery are not more frightful than may be presented by the mildest picture that can be painted of imprisonment for debt in its frequent application to honest poverty. Your committee cannot attach any importance to the feeble suggestion that is sometimes brought up, as a corps de reserve to the scattered forces of the argument against the position now assumed by them, that insolvency, if not coupled with fraud, is nearly always caused by imprudence, which, in the light of its effect upon the interests of others, may be termed culpable if not criminal. The experience of every man the least acquainted with the business of life at the present day, furnishes an immediate and easy refutation of this assertion. The utmost prudence and caution are rendered of no avail, and set at naught by the fluctuations

of the times. The tempest that raises the waves of the ocean in billows to the clouds, and plunges them again into the caverns of the deep, does not cast more suddenly a helpless wreck on the shore, the frail bark of the mariner that was launched on the bosom of the smiling waters beneath a summer sky, than do the commercial storms which so frequently agitate our country, the fairest adventures of honest enterprise.

But again it has been urged that no man need suffer imprisonment who can give sufficient bail, and that a character for honesty will always afford him that protection. This assertion is more specious than true, for, as before observed, the summer friends of prosperity most generally desert us in the winter of adversity. But why subject an honest debtor, against whom no allegation of fraud is presented, to such a demand, as a mode of protection against a deprivation of liberty, which is his natural right, and guaranteed to him by the lavish expenditure of the blood and treasure of his patriot sires? It is a mockery of freedom to countenance such reasoning. It is likewise objected that imprisonment for debt has long stood the test of experience, and is sustained by the authority of long usage and ancient precedent, or otherwise it would not have been so generally incorporated with our free institutions. A partial explanation has been already offered by your committee, of some of the causes, which, in their opinion, have hitherto deadened public sensibility on this topic, and permitted the continued existence of this abuse. As a complete answer to this objection, they would challenge investigation of the premises on which it is based. We deny that imprisonment for debt ever legitimately obtained its pres-

ent place in our social system, ever was a dictate of public necessity, or received the stamp of popular approbation. Its introduction and recognition have been innovations effected by judicial artifice in aid, as it has been too often employed, of exclusive pretension and arbitrary power in derogation of general right. . . .

That these gradual invasions of personal liberty did not awaken the jealousy of the public mind as they advanced, and provoke a spirit of determined resistance, may be easily accounted for from the circumstance, that the proceedings of the courts were, for most of the time, concealed beneath a jargon of terms, invested with the mystery of fictions, and conducted in an unknown and dead language, the Latin tongue. Besides, there was no expression for the popular voice in a parliament composed of rotten boroughs, and exclusively controlled by the wealth and aristocracy of the realm. Such is the story of this illegitimate offspring of the common law of England, begotten by an irresponsible and titled judiciary, up to the period when our fathers, without any question as to its respectability, adopted it into their jurisprudence. That its quiet has not, until lately, been disturbed, and the tale of its origin been drawn from the dusty chronicles of past ages, is not passing strange, when we consider the influence over the mind of long-established custom, however unreasonable, and the attention, labor, and thought that has been demanded in the construction of the proud fabric of freedom in which we now dwell. If some antiquated and absurd models of antiquity have been incorporated into the building, either through inadvertence or mistaken veneration, they have fortunately been so placed, that, without impairing the strength or

beauty of the structure, they may easily be removed by us. Antiquity can lend no sanction to error, but increases the necessity for its early extirpation. . . .

It has passed into a maxim that no man has any natural right, heedlessly to dispose of life or liberty. The Supreme Being and his fellow-man have an interest with himself in both. They are gifts to be improved, and not to be impaired or wasted by him. If, then, they be not within his absolute disposition, how can it be argued, as it sometimes is, in support of imprisonment for debt, that, in regard to every contract entered into under its system, there is an implied cession of the natural right of liberty by the debtor to the creditor, as a mode of satisfying his obligation? If society commits a wrong in enacting such laws, the debtor participates in it by acquiescence, either express or implied, and two wrongs can never make a right.

On the whole, your committee are most clearly of opinion, that humanity, justice, utility, and the public sentiment, imperatively demand a repeal of the law in our jurisprudence permitting imprisonment for debt, and the substitution therefor of a system for the punishment of fraudulent debtors. And they, therefore, respectfully submit a bill to that effect."

V. L. BRADFORD, *Chairman.*

Also an Act "providing a plan for public instruction," thus diffusing general education among the people,—an act of vast importance; and posterity will regard as their greatest benefactors those to whose enlightened forethought they are indebted for so wise and munificent a system. The report of the Superintendent of Public Instruction, submitted to the legislature in

1838, estimates the value of lands donated for the establishment of a State University at \$1,000,000, which was organized at Ann Arbor, a pleasant village about forty miles from Detroit. The value of the land donated for common schools was \$6,000,000, and upon that broad basis a thorough system of common school education was established, securing to the people of Michigan, that high character for intelligence which, in connection with virtuous principles, is the only guarantee for the permanence of our free institutions. Little does the present generation realize how much they are indebted to the far-seeing Senator, then a young lawyer of twenty-nine years of age, for the solid foundations of a great State, which is one of the bulwarks of our liberties.

We have observed throughout Mr. Bradford's career at how early a period in life he assumed the most responsible positions in society, and attained to eminence therein. Here is a youthful statesman giving laws to one of the great internal empires of this continent, projecting railways across northern, southern and central Michigan, hundreds of miles in length, which to-day are monuments of his political foresight and patriotic devotion. At the same time, as a Senator, he was funding a University and establishing the public school system of that great Commonwealth. Genius always shows its power in some form at an early period of life. At twenty-six years of age Edmund Burke wrote his celebrated treatise on the Sublime and Beautiful, and at twenty-five Charles James Fox was recognized as a leader among men in the House of Commons. Said Lord Bacon: "The invention of young men is more lively than that of old, and imaginations stream

into their minds more divinely." In his twenty-third year Vesalius, the father of human anatomy, taught that science, as professor, in the University of Padua. Harvey made his memorable discovery of the circulation of the blood at thirty. Sir Isaac Newton brought forward his views on light and colors before he was twenty; and President Edwards, the elder, whom Dr. Chalmers, of Scotland, pronounced the "greatest gift of America to the human race," on account of his immortal treatise on the "Freedom of the Human Will," carefully observed, at twelve years of age, the characteristic habits and movements of a spider, and so faithfully and accurately described them as to excite the wonder and admiration of modern naturalists.

Not satisfied with the lines of these great railways, Mr. Bradford proposed and secured, with the help of others, the construction of canals, connecting within the State, the counties of Macomb, Oakland, Livingston, Ingham, Eaton, Barry and Allegan with Lake Michigan and the ship canal around the Sault de Ste. Marie, connecting the waters of Lake Superior with those below, and thus opened a continuous line of navigation throughout the whole extent of those inland seas. So important was this canal of the Sault de Ste. Marie considered, that Mr. Bradford made a special visit to Washington, laid the subject before Hon. John C. Calhoun, at that time of great influence in the Senate, and so convinced him of the growing influence and power of the great Northwest, that a government appropriation in favor of the construction of the canal was secured.

The President of the Senate, Hon. Edward Munday, placed Mr. Bradford on four of its most important

committees, namely: the "Judiciary," in which all laws and the requisite changes in the code, were discussed before revision and enactment; the Committee on "Literature," including the university, the common schools, the geological and mineralogical and botanical surveys of the State, the vast mines of iron and copper, the salt springs, and lumber, with their varied interests; the Committee on "Expiring Laws," to which all obsolete or obsolescent legislation was referred, the statutes which should take the place of those thus repealed, and the codification of laws already in force, were subjects of enactment; the Committee on "Elections," to which all cases of dispute with regard to seats, rival claimants, the value of their claims, the manner of conducting elections throughout the infant State, one and all came before its members. In the year 1839, he was placed on the Committee of Internal Improvements, instead of the Judiciary, because the former came to the front as the most important in the State.

An immense amount of hard work was accomplished by this indefatigable jurist and statesman, as the records of the Legislature abundantly show. Three State papers or reports were prepared by him: one, illustrating his power as an able jurist to discuss delicate and vital questions pertaining to real-estate legislation, viz. :

"The bill proposes to enact, that whenever the creditor, in any judgment obtained in a court of record, shall choose to issue his execution and to levy on the real estate of his judgment debtor, the same shall be set off to him at a just appraised value, towards satisfaction of his execution, free of all right of redemption

on the part of the debtor, instead of being sold by the sheriff at public sale as formerly. The mode in which this shall be done, as pointed out by the bill, is, that the sheriff, after the levy has been made, shall give the same public notice of it, as he now does of his public sale of lands under execution. At the time and place designated in such notice, three appraisers, reputable freeholders of the vicinity, shall be chosen, one by the creditor, another by the debtor, and the third, or middle man, by the sheriff having charge of the writ. These appraisers are to be sworn to make a fair, just and true appraisement of the real estate to be exhibited to them as the subject of the levy, and when so sworn, they are to proceed to make such an appraisement, and to set off the real estate so appraised to the creditor, in satisfaction of his demand. This is the principle of the bill. Its details provide with some particularity for carrying out this principle. As this bill, if passed into a law, will supersede the present mode of satisfying demands in judgment, by a public sale of real estate, and effects in this respect an important and entire change in one branch of our collection laws, its minor provisions are consequently many. It is not necessary here to specify them. The bill will exhibit them. The committee have found no occasion for amendment in the bill, as it appears to be correctly drawn, and they agree with its principles. They will content themselves with making a single further remark as to its details, before they proceed to furnish to the Senate their reasons for approving of and recommending the adoption of its principle. No additional cost or legal fees are imposed by this bill. On the contrary, while all due publicity is given to proceedings under it, while pro-

vision is made for security of title consequent on the change of property, suitable guards instituted to protect the relative rights of all parties thereto, and the remedy extended to every kind of real estate, whether consisting of lands and tenements or rights and interests therein or appertaining thereto, less costs and charge will be occasioned than heretofore.

Having thus afforded the Senate a brief sketch or synopsis of the formal features of the bill, the committee will proceed to assign the reasons which induce them to report in favor of its principles.

In the history of our jurisprudence received from the English common law, it will be perceived that real estate has ever been greatly favored. This inclination to protect and preserve it in the hands of owners and occupants, no doubt originated from the social condition of our British ancestors. The feudal tenures not legally abolished until about a century and a half ago, in the reign of the Second Charles, were based on the possession of large landed property, and gave entire tone and complexion to the English common law. At this very day, in England, real estate of freehold character can only be extended, and never sold in payment of debts. The law in that respect has experienced a change in this country to a very considerable extent among the States of our confederacy, by statutory modifications. The statute laws of most of the States at the present time treat real estate as chattels for the payment of debts. Many of the States, however, still retain a preference for the old common law system, of only extending lands for the payment of debts.

Whether real estate shall be extended or sold, that is, whether it shall be placed in the temporary posses-

sion of the creditor to satisfy himself out of a reception of its rents and profits, or the title of the debtor shall be wholly transferred to the highest bidder at a public sale, is a matter entirely of remedial regulation and local policy. No law of contract is violated by remedial enactments in respect to the mode of obtaining satisfaction of a general debt or demand. The law of a personal contract to pay any sum of money, is simply what it purports to be, for the payment of the money. If any failure of performance occurs, and the creditor is obliged to resort to the laws of the country to enable him to reach the property of his debtor, or in any other way to compel payment by the debtor, he must take those laws, as the general convenience and policy of the country may from time to time frame them. It is different where the contract appertains to some specific property, such as a mortgage, or any other hypothecation of personal or real estate. As the contract is no longer general, and personal and referable for enforcement to the general laws of personal right and security, as they may from time to time vary in the State, but is specifically based upon and relates to the property itself, and necessarily contemplates the laws that at that time recognize it with its incidents, those laws become part of such contract. A law affecting contracts is, therefore, clearly distinguishable from a law of general remedy. One cannot constitutionally be framed; the other may be varied as suits the pleasure and convenience of the State, both in retrospective and prospective effect. Thus much has been premised, to meet in advance, any supposition, that the passage of this bill will affect any law of contract. It neither can nor will. It proposes merely to alter the law relating to

executions levied on real estate, which is always a "law of remedy." This distinction has been recognized and clearly settled by every tribunal in the land.

If the passage of this bill will not affect any law of contract, how, then, can it be urged that the just rights and claims of any creditor will be trampled on or violated? The debt or demand is nowise lessened or impaired in respect to its validity and obligation on the debtor. The courts of the State will, as before, give judgment in favor of any just demand of the creditor. Execution will issue as before, against the goods and chattels, lands and tenements of the debtor. This bill makes neither personal nor real estate any tender in payment of debts. That cannot be done; for by the Constitution of the United States the gold and silver coin of the Union is the only legal tender.

It exerts no compulsion over the creditor. It does not oblige him to levy on the real estate of his debtor or to resort to it for payment. He may choose his own time and mode of remedy as before. Never having been possessed of any implied or express pledge of public faith that the laws of remedy, usually termed collection laws, then in force, should remain permanent, and never be altered, the creditor cannot complain of any such alteration effected by the demand of public necessity or policy. Should it, therefore, now appear that the passage of this bill, or of one containing the same principle, is imperatively demanded by the public good, surely no law affecting contracts is passed, no public faith is violated, no right of the creditor in a personal contract is sacrificed. Whatever of private advantage over his debtor may be lost by the creditor, must be properly yielded to the public

good, for "*omnia privata cedant bono publico.*" Having thus obviated a preliminary objection, which the committee are aware has been often urged by those opposed to the passage of like bills to the one now under consideration, the particular merits of the measure itself are fairly brought up for examination.

It appears to the committee that the present pecuniary condition of Michigan requires the adoption of this measure. It needs no argument or statistical exhibition to show the fact that the people of this State are deeply in debt, and that owing to a multiplicity of causes, which it is not necessary here to enumerate, they are destitute of ability to discharge this debt in coin or its representative, a sound paper currency. The vast amount of collection suits brought throughout the State, to enforce payment of some millions of dollars, and now rapidly hastening to final judgment, attests the almost hopeless embarrassment of our pecuniary affairs and our inability to retrieve them by cash or surplus production for a long time to come. Thus destitute of money to meet our heavy engagements at home or abroad, unable from the sparseness of our population and the infancy of the country, to do much more at present, than to furnish our own bread-stuffs, it is in vain to expect relief in any other way than by a fair application of our property to the payment of our debts.

Our present embarrassments have been very much occasioned by the investment of former pecuniary means in real estate. This for a short time improved so rapidly in value, that it justified a reliance on it, not only to meet our engagements, but also to secure future prosperity. A change in the tide of affairs

abroad, both in the eastern and well-settled parts of our country, and in Europe, from whence we expected capital and emigration to sustain our hopes, has been as much beyond our control, as it has unexpectedly disappointed our calculations. Still so rapid and astonishing have been the settlement and cultivation of Michigan, that our real estate has not intrinsically depreciated. Our population is just as hardy, intelligent, industrious, persevering and enterprising as before, our soil is as unsurpassed in fertility as ever—our natural advantages have suffered no diminution, and all that we stand in need of is, an opportunity to pay our debts, and to start fresh and unincumbered in the race of national improvement. In order to effect this, it is natural that we should still look to our real estate resources. Our means lie there invested. The personal property of a State and people so new and young as we are, must be, as it is, comparatively small. Our great interest, and almost our only resource at the present time, is our real estate. It is all we have to pay our debts, and all that we can offer to our creditors. Now, this bill favors the just application of that real estate to that purpose. Our creditors, almost invariably, are obliged, after judgment, to resort to it for satisfaction. The only question made by this bill is, shall they have it at its just and fair value, appraised under the solemn sanctions of an oath, or be allowed to wrest it from us at immense and ruinous sacrifices. The question is not stated in any terms of exaggeration, for, owing to the almost absolute deficiency of money in the State, it is undoubtedly the fact, that real estate forced to a sale under the sheriff's hammer, will not, on an average, bring one-fifth of its intrinsic

value. It is not now true, in respect to real estate in Michigan, "that the worth of a thing is what it will bring." It is manifestly otherwise; and the measure contemplated by this bill, seeks to remedy the unequal and oppressive operation of this rule upon the great interest of this State, its real estate. When this rule of value is just and accurate, or nearly so, in its practical workings, then unquestionably it ought to be observed, and real estate, under the levy of an execution, should be exposed at public sale to the highest and best bidder, in justice both to creditor and debtor. If this be admitted, a contrary practice should be adopted, when the rule works otherwise. The great law of self-preservation here raises its voice in favor of this bill. It is believed by the committee that a public necessity exists for its immediate adoption. No remedy so effectual can be proposed for the relief of the present distress of Michigan.

Your committee are individually in favor of a State bank on proper principles. But they do not entertain a hope, that it can extricate us from our difficulties. It may furnish us with a sounder currency, and relieve us from the heavy taxation of adverse exchanges, but it will not pay our debts. It can but shift our indebtedness and give us some further time. But, as has been shown, time, unless very extended indeed, will not avail us. Our embarrassments are too extensive, and we are too deeply and generally involved, to derive benefit from any other means, than the application of our real estate resources at a fair and intrinsic value to the discharge of our responsibilities.

Your committee would further observe, that the great cause of public virtue and morality would be en-

hanced by such a measure as is contemplated by this bill. In view of the ruinous and unjust sacrifices that are occasioned by the present system of selling real estate under execution at sheriff's sale, experience testifies, that a general and extraordinary temptation exists, to cover real estate from the process of creditors, by fraudulent conveyances. Debtors, who, under other circumstances, would consider it dishonest and disreputable to resort to such contrivances, are now tempted to justify it to their consciences by a consideration of the unfair advantages which their creditors would otherwise obtain over them, and of the ruinous consequences to their families, if they permitted such sales. The committee, therefore, conceive that it is, in a legislative point of view, a sound and wise objection to the present continuance of the system of sheriff's sales of real estate under execution, that it tends to the demoralization of the community; for no laws are wholesome whose operations are so oppressive, unjust and unequal, as in any case to induce and almost to justify fraud, in order to their evasion. Believing, then, that a just and fair regard to the public interest, to protect and further which this legislature are here convened, at the present time and under present circumstances, requires the repeal of sheriff's sales of real estate under execution, the committee cannot understand how a measure such as is proposed by this bill, fraught with benefit to the community at large, and due to the rights of the debtor, can be resisted on the ground that it is unjust to the creditor. They have shown that it interferes with no law of contract, and that it invades no vested rights of the creditor. They now propose to shew that it is as just and beneficial to

a fair and honest minded creditor as it is to the public and the debtor.

The committee would be far from recommending, at the expense of a violation of the natural sense of right which exists in the human mind, any partial legislation, however sustained by considerations of policy, power and interest. They would not legislate for the debtor, however popular the measure, at the expense of the legal or equitable rights of the creditor. But what more can any creditor demand of public justice and legislation than, if his debtor cannot pay him the money he owes him, he shall be assisted in obtaining such debtor's property at its just value in satisfaction? He certainly cannot demand that he shall be permitted to speculate on the necessities of his debtor to compel him to pay unreasonable or usurious interest, to enslave his person or family, or to take from him his property at one-fifth of its real value. Shylock-like, he will not be suffered to clamor for the pound of flesh nearest to his debtor's heart, in satisfaction of the penalty of his bond. Such unreasonable, cruel and anti-republican views of the nature of a creditor's claims upon the person and property of his debtor, are now exploded and repudiated. All that a creditor can righteously ask, is granted him by this bill.

If he chooses to have recourse to the real estate of his debtor in satisfaction of his claim, he can take it at its fair value, and by the provisions of this bill, he can take it over absolutely and become its immediate possessor in fee simple, clear of all right of redemption. He is thus enabled immediately to use and employ it as his own, to profit by its cultivation, and any increase on its value, or to apply it to the liquidation of claims

against himself. Under the system now in use, satisfaction of the demand of the debtor is delayed during the one and two years of redemption allowed to the debtor. In almost every instance, a creditor bringing the real estate of his debtor to a sale by the sheriff under his execution, is now obliged to buy it in, and then to await the expiration of the period of redemption, with scarcely any hope of benefit therefrom in the present depressed condition of the country, by any payment of moneys from the debtor in redemption of it, before he can call the property his own or employ it as such. This bill, by obviating the necessity for this delay, confers, in the opinion of your committee, a substantial benefit on the creditor. But the benefit to creditors does not end here. Under the present system of sheriff sales, the creditor who makes the first levy being able to buy in the property of his debtor for want of ready money in the country, at perhaps one-fifth of its real value, or even less, is thus permitted, by sweeping away more than his fair proportion of the debtor's property, to obtain a preference over and inflict a serious wrong upon other creditors. In this respect, both as regards debtors and creditors, the bill now reported, if passed into an act, will operate for the relief of the country, somewhat as a general bankrupt law.

But it may be here objected, that however fair and just in theory the propositions of the bill may appear, in its practical application, from the partiality that human infirmity may induce on the part of the appraisers, even although sworn to do their duty towards the debtor as towards their friend and neighbor, having a peculiar identity of interest with themselves in sus-

taining the value of the property submitted to them for appraisement, the interests of the creditor may not be fairly considered, and he be forced, in a majority of instances, to take over the real estate appraised, at more than its just value.

To this we reply, that such an objection rests upon a mere supposition of wrong, which is, at the best, a remote possibility, and can never be regarded in legislation. That it is a violent presumption against public virtue and justice, which, in framing general laws for the protection of general right, no statesman can admit or take into consideration. If such objection be admitted as possessed of any force, it will extend beyond the present case, and affect all kind of legislation, and even the ordinary administration of justice. For on what other safeguards do we depend for the security of our lives, reputation and property, than public virtue and the sanctions of an oath. As well dispense with all trials by jury and the administration of justice, when non-residents are parties to suits, within this State, for lack of public integrity and conscience, as admit the propriety of such an objection in the present case. Besides, this bill provides carefully against such wrong. It gives the creditor the right of selecting one of the three appraisers, and the sheriff having charge of the execution, who is always considered in law as acting specially for the plaintiff or creditor, the appointment of another appraiser. What more can be done to secure to the creditor a fair voice and influence in the appraisement? Furthermore, it is considered by the committee, that the creditor will seldom, if ever, be a sufferer by such slight over-estimates, as may occasionally be made. They infer this from the present

character and future prospects of this State. Our lands are as much depressed in value at present as probably they will ever be again in all future time. Our State is new and youthful. It must advance and cannot retrograde. Any change that occurs must be for the better. If this remedial measure is adopted, a new impetus will be given to our energies; and, like the giant Antæus of old, we shall rise refreshed from having touched our mother earth. The present depression of real estate is occasioned by its liability to forced sales under the sheriff's hammer, when there are no purchasers and almost innumerable sales. This produces a panic, which is rapidly depreciating it in value throughout the State. Remove this incubus from off real estate, and it will rapidly regain its real value. The fields of Michigan will once more smile in teeming abundance, and landed possessions within her borders will shortly be prized more than ever. Her great and valuable system of internal improvement, laying open every portion of her territory to emigration and cultivation, and involving a profitable investment of some seven or eight millions of dollars, comes in aid of the expectations of the foreign creditor, who shall have acquired property through the medium of this bill, and affords him an ample guarantee against any loss or injury. That the measure proposed by this bill is not unjust nor unequal in its operation on either the creditor or debtor, and, in a high degree, promotive of public good and prosperity, is further evinced, by the experience of many of the New England States and of Ohio, where similar laws have prevailed without complaint or alteration. It is also further believed by the committee, that a system of

setting off real estate levied on under execution at a just and sworn appraisement, will not only be just and equal to both creditor and debtor and due to public necessity at present, but will also have a tendency to promote amicable arrangements between debtors and creditors of claims and demands, and will thereby relieve the people of this State from an immense annual taxation in the shape of fees and costs.

Creditors will be disposed, by amicable arbitration, to determine the value of their debtors' real estate, and take it from them in satisfaction, without the costs and delay of litigation; and all honest debtors will cordially agree to such propositions. In fine, the committee are satisfied that an adoption of the measure proposed in the bill now reported by this legislature, will, in a very short period of time, cancel the debts of Michigan, revive her credit, and restore to her business activity and prosperity."

VINCENT L. BRADFORD, *Chairman.*

The second paper, previously inserted, showing his ability as a statesman to perceive the nature and relations of such a penal enactment as imprisonment for debt, and its injustice, as well as hardship, to both creditor and debtor; and a third paper, for which we have no space, on the importance of a well-built and properly conducted penitentiary, in which the prisoners, while sufficiently isolated, might be taught profitable trades, for their future amendment and the support of the institution.

At the completion of his second year in the Senate of Michigan, he had created such a favorable impression, throughout the State, by his industry, ability, and

learning, that he received several legislative votes in an election for the United States Senate, and would have been sent to Washington, had his age and health been sufficient for that exalted station. Before that period arrived, the claims of filial duty rendered his return to Philadelphia an imperative matter. His professional engagements compelled his retirement from the Senate of Michigan in 1840, and until November, 1843, he held the offices of Master in Chancery and Circuit Court Commissioner.

This period of eight years in Michigan was one of the most eventful in his remarkable career. It recalls the history of his ancestors. At early manhood, when admitted to the bar of Philadelphia, in 1829, from convictions of patriotic duty, he embraced in politics those constitutional doctrines in respect to a strict construction of the limited, express, and delegated powers of the Federal Government and the "reserved rights" of the States of the Union, which had been enunciated by Thomas Jefferson, James Madison, and other leaders of the Democratic Republican Party of the United States.

In the days of his Dutch ancestors, all that Louis XIV. asked of the Stuarts in England was the permission to drive over the neck of European liberty. The people of Holland, who had frustrated the "divine right" of Philip of Spain, were ready to accomplish the same for James. In the background was a Holland and a William prepared to save England from tyranny. The Dutch Stadtholder came over to make the English adopt the ideas of the Netherlands. The religious liberty of the Dutch Provinces became the English "Act of Toleration." Republican freedom blossomed into the "Bill of Rights," which crossed the Atlantic,

and bore fruit in more than thirty sovereign empires. Vincent L. Bradford breathed these lessons of history at his mother's knee. She honored the name of Jacob Leisler, the martyr-patriot of the New Netherlands. He heard them in his father's counsels, who was the grandson of the patriot printer of the American Revolution. As Holland's institutions were studied by his forefathers, when they sought to transfer the lowland plant of liberty to a genial soil, so, on reaching Michigan, when Vincent L. Bradford was placed by his fellow-citizens in a post of honor and trust, the State Senate, the same institutions were to be studied, for the same principles were to be inculcated. A new State was to be launched into existence amid great lakes, exposed constantly to untried dangers; every virtue to be maintained, and every evil checked; surrounded by other States with different nationalities and opposite interests, which should become a great inland empire where churches might exist without a bishop, and States without a king.

The voice of Madison, his great-uncle's classmate and friend, cried, in his hearing, for the cause of liberty, "Beware in laying your foundations of too much central power on the one hand, and of political inequality on the other." There was danger to the nascent State from its rapid growth; danger to its religious liberty from Rome, as enthroned in a part of the British possessions, for Michigan was the hunting-ground of Tories, Indians and Jesuits. To secure the great bulwarks of religious liberty, the union with other States, and a Republican form of government, was the problem of those early sessions of the Michigan Senate.

CHAPTER V.

Returns to Philadelphia.—Law Partner and New Life in the Firm.—Condition of Philadelphia, 1843 to 1854.—Bank Suspensions and Financial Litigation.—Solicitor for the Mechanics Bank.—Era of Great Riots.—Rev. Mr. Gloucester.—Success as an Ecclesiastical Lawyer.—Weavers' Riot in Kensington.—Native Americans and the Roman Catholic Riots. Mass Meeting at Independence Square.—July Riots of 1844 in Southwark. Efforts for Consolidation.—Police for the Entire City.—John S. Keyser, his Personal Friend and Client.—Counsel for the Estate of Thomas Bradford (Printer).—Suit of "*Bradford vs. Flintham*."—The "*Gardner Estate*."—Valuable Ground Changes Hands.—Mr. Bradford as a Real Estate Lawyer.—Two Men Lose a Judgeship, and a Third the Presidency of the United States.—A Suburban Residence.—Sanitarium for Hay Fever.

BUT his aged and honored father, Thomas Bradford, LL.D., now sixty-five years old, was beginning to feel the infirmities of age, and sent for his eldest son to share the burdens of professional life. They formed a partnership in the practice of law, which continued from November, 1843, to October, 1851, when it was dissolved by the death of the senior partner. It proved a successful partnership. New life was infused into the business of the firm by the accession of youthful blood; in the full possession of its activity, and stimulated by his experience of Western life. Old clients returned, and new ones began to seek the portals of No. 705 Sansom Street, which, for quarter of a century, had received as guests or clients many of the most eminent men in church and State. During this period, from 1843 to 1854, or ten years, Philadelphia underwent great changes. It was passing from a collection of villages to the law and order of a consolidated city.

Into this seething mass of city life, then in a turmoil of confusion, Vincent L. Bradford threw himself with his usual energy and ardor, determined to succeed as a man, a citizen and a lawyer. Let us see his success.

It was an era of bank suspensions. The Girard Bank, with \$1,500,000 capital, had been forced to suspend, owing to the withdrawal of the funds of Stephen Girard's private bank. Other banks soon followed. The Bank of Pennsylvania was closed, and the Mechanics' Bank, of which Mr. Bradford was the solicitor, shared the same fate. The litigation which grew out of this period of suspension was long and vexatious, but gave a wide scope for the development of his talents as a financial lawyer, broke up the isolation of the banks, and by the formation of leagues brought about the clearing-house system, which has consolidated the banking system of the great cities. So greatly did he add to his reputation as a financier that the Mechanics' Bank retained his services until his retirement from legal practice, when his nephew, Emanuel Rey, Esq., took his place.

This was also the period (1843 to 1854) of great riots in Philadelphia, as well as disturbances in the banks and their circulating medium. On the 1st of August, 1842, the colored people of the "Moyamensing Temperance Society," while on parade, were attacked; and the discharge of a gun by a colored man in Bradford's Alley, fanned the flame of excitement. The riot spread to Lombard, between Seventh and Eighth Streets, and two large buildings, one of which was a church, were burned. As the counsel for the negro preacher, Rev. Mr. Gloucester, a man of more than usual merit, the firm of T. & V. L. Bradford gained

great reputation. Out of that turmoil grew the First African Presbyterian church edifice, on Lombard Street between Eighth and Ninth Streets.

The weavers' riot in Kensington, which arose from a question of wages, was a relief to the general public from the injustice inflicted on the negroes. A mob of weavers at Front and Brown Streets entered houses, cut warps, destroyed looms and stuff in the process of manufacture. The Sheriff's posse were beaten with clubs, and compelled to retreat. Eight companies of General Cadwallader's brigade assembled at their armories and proved sufficient to prevent further disturbances. In 1844 the objects on which this riotous spirit sought to vent itself were no longer negroes, but foreigners. In some of the States,—notably New York,—the Roman Catholic clergy and laity had united in claiming privileges for their children in the public schools. They asked, it is said, to have the Bible, according to King James' version, prohibited therein. This led to the formation of the Native American party, which sought "to deny to foreigners a voice in legislation, or eligibility to political offices, the maintenance of the Bible, without note or comment, in the public schools," as the fountain-head of morality and all good government.

On Monday (May 6th), a meeting, held by those in unison with such views, was broken up at Second and Master Streets, which caused great excitement, as it was asserted that the attacking party were foreigners, and the majority of them Irishmen. By degrees the scene changed to Germantown Road, and as far north as Jefferson Street, where George Shiffler, a lad of eighteen years, was mortally wounded, and died

speedily. Eleven others, all Americans, were wounded, but recovered. Then followed the attack on the "Nunnery" at Second and Thompson Streets, where shots were fired from the upper stories, and two citizens mortally wounded. Altogether about thirty houses were consumed along Cadwallader, Jefferson and Washington Streets. At this time St. Michael's Church, at the corner of Second and Jefferson Streets, was set on fire and destroyed. Then followed St. Augustine's, on Fourth Street below Vine, within the limits of the old city. The troops, under Major-General Patterson and General George Cadwallader, had all been in Kensington, and there was no preparation to meet this onslaught of murder, rapine and arson in Philadelphia. On the 9th of May, ten thousand persons assembled in State House Square, where a meeting was called, in which John M. Reed, Frederick Fraley, Horace Binney, Vincent L. Bradford and John K. Kane took part. As the result of their efforts, resolutions were adopted urging citizens "to enrol and remain in readiness to maintain the laws and protect the public peace." For several days peace was preserved. Prior to the May riots, the Native American party did not number probably five hundred voters, and the movement was regarded with contempt by the old political parties. But after those riots its numbers swelled to thousands. On the Fourth of July following, they mustered nearly five thousand, in one of the finest political processions the city had ever seen. On the 5th a large crowd gathered around the church of St. Philip de Neri, on Queen Street between Second and Third. Southwark was strongly Native American in its population. The church had been foolishly

stored with muskets, axes, pistols and a keg of powder, while a party of fifty men had been enrolled by William H. Dunn, the pastor's brother, who was a fiery young Irish lawyer. The mob secured cannon, with which they sought to obtain an entrance; but as their ammunition consisted of slugs and nails, the damage to the church was small. On the night of Sunday (July 7), the cavalry, which arrived on the scene, succeeded in capturing three pieces, and the war was over. Throughout this gloomy period of suspense and anxiety in the July riots of 1844, Mr. Bradford might be seen on horseback,—with his badge as "Marshal's aid," or "Sheriff's Posse" on his hat, riding through the infected district, and using his influence with that of his friend, Lewis C. Levin, Esq., afterwards Congressman, and a prominent Native American, persuading the populace to act like worthy and respectable men.

Thoughtful citizens now saw that the only remedy for such a state of murder and arson was to break up the separate and independent municipalities, and unite them under one government. The first step in that direction was the passage of an act by the legislature on May 3, 1850, which had been warmly advocated by Mr. Bradford, directing the citizens of Philadelphia, Northern Liberties, Southwark, and the other districts, to choose a marshal of police for the entire city and its suburbs. In the October election, John S. Keyser, the personal friend and client of Mr. Bradford, was elected; and he proved to be a bold and vigilant officer, whose merits were appreciated by the people. The lawless clubs and associations were broken up, and order once more reigned in Philadelphia.

In 1837, Thomas Bradford (printer), the brother of the Attorney-General of the United States, died at the advanced age of ninety-four years. He made two wills: one (1821), pertaining to "realty;" the other, (1835) to "personalty." His real estate, which was largely the gift of his brother, was scattered through various counties of Pennsylvania, as well as the city of Philadelphia and its suburbs. By his will, the property was chiefly bequeathed to his son Thomas, though handsome sums went to the other children. Some of the heirs combined to break the will, and a suit followed, which occupied years of litigation.

The case in the Orphans' Court of Bradford *vs.* Flintham is one of the famous cases in the docket, not only on account of the important questions involved, but the ability of the counsel engaged, and the tenacity with which they contested it. The brief of Mr. Vincent L. Bradford, prepared with consummate care and ability, illustrates his great comprehensiveness of learning, force of argument, and untiring assiduity in the preparation of his cases. If no other monument remained of his skill and wonderful erudition as a lawyer, this would be sufficient to convince any sceptic. Its great length alone prevents its insertion here. In gaining this case, his father, Thomas Bradford, LL.D., secured a handsome estate.

Among similar cases, in the Common Pleas, the case of the Gardner Estate, involving the right and title to large and valuable lots of land on the banks of the Schuylkill, and other parts of the city of Philadelphia, was contested with equal energy and determination, though his opponents were the ablest members of the bar, till it was decided in his favor. At the conclusion

of this noted case, the late Judge John Cadwallader, who had been his playmate in childhood, and college mate in the university, exclaimed: "My friend Bradford has opinions, and rare ability to maintain them, with an exuberance of legal learning which surprises every one."

After a long, laborious, and eminently useful life as a lawyer, philanthropist and Christian, Thomas Bradford, LL.D., died in October, 1851. Through the personal influence of Henry Clay, in the Senate of the United States, he was defeated in his aspiration for a Judgeship on the bench of the United States Circuit Court. On the 7th of June, 1848, in the National Convention, held at the corner of Ninth and Sansom Streets, within one block of Mr. Bradford's residence, Henry Clay was defeated in his aspirations for the Presidency, three years before Mr. Bradford's decease. How strange the Nemesis of politics!

During the eight years which had passed since his return to Philadelphia from Michigan, Mr. Vincent L. Bradford had become so prominent at the bar of Philadelphia, and as a citizen so distinguished for his love of law and order in society, and for his eminent fitness for the position, that he was placed, by a convention of the Democratic party, on their judicial ticket, as a candidate for the District Court of the City and County of Philadelphia. Mr. Bradford felt deeply interested in an amendment to the Constitution, whereby the judiciary were to be elected by the people, advocated the measure at public meetings in Philadelphia and elsewhere, and argued it before the legislature, which resulted in its adoption. No more honorable position was within the gift of his fellow-citizens, and no one

at the bar was better able to fill it. His great-uncle had been Justice of the Supreme Court of Pennsylvania, as well as Attorney-General of this State, and of the United States. The judicial robes naturally fell upon his shoulders, had the lot fallen into his lap. He was placed in most honorable company. No better men could be found in any community, "who feared God and honored the king," than the Hon. Joel Jones and James F. Johnson, Esq., his fellows on the same ticket. But the entire Democratic ticket in Philadelphia, however, was defeated at the October election of 1851. The honors of the bench were reserved for his nephew, Hon. Thomas Bradford Dwight, A. M., the second son of his only sister, Mrs. Eliza Loockerman Dwight, who, after serving seven years as First Assistant District Attorney of the Pleas, with marked ability, was elevated to the bench of the new Orphans' Court at the early age of thirty-seven,—the youngest judge in the State,—by the largest majority on the ticket. Vincent L. Bradford was needed elsewhere, in a wider sphere, where he could be of more service to his beloved city, State and country—than as judge of the District Court.

In 1855, he left the old homestead, which, for forty years, the family had occupied, and which had been his own residence since 1848, for a large and elegant mansion, with grounds, in the Twenty-second Ward (Germantown). Few more eligible or more salubrious residences exist, so near Philadelphia. Embowered with trees, in the midst of well-cultivated gardens, on a broad and capacious avenue, the house is filled with all that is pleasant to the eye and good for food. Here, for thirty years, at No. 151 West Cheltenham Avenue, he

enjoyed the comforts of home, surrounded by friends and relatives, entertaining the great and good from all parts of the Union, and from both Continents, who loved to make a pilgrimage to the "Roorst," as the old Hollanders called it, and as he adopted the surname. This change from city to country was made for his health, which was benefited by it. He never possessed a vigorous constitution. By inheritance from his mother, he not only received a handsome patrimony, but certain other "hereditaments," gout and rheumatism. His active life in Michigan exposed him to the peculiarities of that climate, and he brought back to Philadelphia its malaria. A severe bronchial catarrh, affecting the whole mucous membrane, would, at intervals, include the nasal and aural passages. Especially in the months of August and September, this malady, commonly called "hay fever," afflicted him so severely that he was forced to flee to higher latitudes than those of Germantown. In the White Mountains, and in the bracing air of Richfield Springs, he found the relief he so much desired. For nine years, he was an *habitué* at the "Springs," where, in the intervals of convalescence, he was the centre of admiring interest to the select circle in which he moved "glittering like a star, full of life and splendor and joy."

CHAPTER VI.

Development in Railways.—Steamships Equally Active.—Lawyers and Merchants Aroused.—Accepts the Presidency of the Philadelphia and Trenton Railroad Company. Influence of his Position.—Extent and Value of the United Companies.—Prepares the Road for the Civil War.—Foresees the Storm and Rides out the Gale.—Vice-President at a Mass Meeting of Thirty Thousand Citizens.—Inclined to Conservative Views.—In Constant and Cordial Communication with Colonel Thomas Scott, Assistant Secretary of War.—The Lease of the United Companies of New Jersey to the Pennsylvania Railroad.—Energy and Ability as a Railway Executive.—Sir Roundell Palmer.—The Chancellor's Opinion.—His Brief in Great Britain and on the Continent.—Elements of Power as a Lawyer.—Trip to Europe.—Civilities Abroad.—Homeward Bound.

THE period between 1843 and 1854—the year of consolidation—was remarkable for the number of railroads and transportation companies undertaken in Pennsylvania. The year 1846 (April 13) witnessed the incorporation of the Pennsylvania Railroad Company. The route to be completed was from Harrisburg to Pittsburgh. At the same time (July 30), a charter was granted to the Baltimore and Ohio Company, stipulating that unless the Pennsylvania Railroad Company paid in \$1,000,000 of its capital, and had thirty miles of its roadway under contract, its advantages would be granted to the Baltimore and Ohio Railroad. The liberal subscription by the City of Philadelphia, and the districts, for \$5,000,000, secured the charter to the Pennsylvania Railroad Company. In 1849, the tracks of the Columbia Railroad were brought to Market Street from Belmont, a permanent bridge constructed, and thus connected with Broad Street. In 1852, the railroad from Philadelphia to Easton and the

Water Gap was chartered, to secure the rich trade of Bucks and Northampton counties, and by extension to divert the coal from the Lehigh to the city of Philadelphia. This corporation in the following year became the North Pennsylvania Railroad Company. In 1853 the Sunbury and Erie Railroad received fresh impetus by a subscription of \$1,500,000 from the City of Philadelphia and the District of Richmond. In 1854, the Belvidere Delaware Railroad, which, by its connection with the Philadelphia and Trenton Railroad Company, insured a communication with eastern Pennsylvania, was formally opened and subsequently extended to the Delaware Water Gap. In July, of the same year, the Camden and Atlantic Railroad was finished for travel across the State of New Jersey. Activity in railway construction was only equalled by the establishment of successive steamship lines between Philadelphia and Boston, Providence and New York (March, 1850), between Philadelphia and Savannah (March, 1851), and between Philadelphia and Europe (January, 1852). All these opened new channels for trade, and greatly increased the business facilities for lawyers and merchants.

Mr. Bradford who had early shown (1834) great ability as a railroad lawyer, among others, in the celebrated case of *Levering vs. The Germantown and Norristown Railroad*—which he subsequently gained in 1845—now began to devote his attention to that branch of legal practice. A new era in his life begins with the year 1859, when, at fifty-one years of age, he was offered the presidency of the Philadelphia and Trenton Railroad Company. At this period he had been in active practice as a lawyer thirty-one years in the great

States of Pennsylvania and Michigan, twenty-three of which were in the city of Philadelphia, and had given abundant evidence of his ability, industry and learning in all the State Courts, as well as the Supreme Court of the United States, to which he was admitted as a counsellor in 1858. The Board of Direction of the "United Companies of New Jersey, comprising the Camden and Amboy Railroad and Transportation Company, the Delaware and Raritan Canal Company, and the New Jersey Railroad and Transportation Company, and composed of such gentlemen as Edwin Stevens, Esq., of Hoboken, N. J., Robert Stockton, Esq., the Potter family, and others no less eminent in the history of New Jersey, were looking for an able railroad lawyer, and a finished gentleman to preside at the council board over their main trunk line from Philadelphia to New York, involving an insight and acquaintance with the other companies, which were integers of the "United Companies," and those which they had leased. Their choice fell upon Vincent L. Bradford.

Neither the directors nor their president dreamed of what awaited them. No sooner had he entered on his duties, than he found it necessary to secure a brief of title to the roadway, to have the deeds properly recorded, and thus establish the right of the road to its own track. This involved the construction of fences, metes and bounds, straightening of track, the purchase of land and the building of bridges, which occupied all his time during the first year of his presidency.

On the 6th of November, 1860, the long struggle between the North and the South on the slavery question ended with the election of Abraham Lincoln to the

Presidency; and on the 20th of December following, the State Convention of South Carolina, by a unanimous vote, passed the ordinance of secession. One week previously (December 13) a monster meeting, numbering thirty thousand persons, was held in Independence Square, over which Mayor Henry presided, and Vincent L. Bradford was one of the vice-presidents. In the resolutions which were adopted, the officers of the meeting and citizens avowed their unbroken attachment to the Union, and their steadfast determination to preserve its integrity. They approved of a convention of delegates to consider the question of secession and the dangers which menaced the Union, and entreated the Southern States not to destroy so great and so fair an inheritance. On December 14th, a convention, composed of friends of the Union irrespective of party, was called by the Democratic Association of Germantown, at which addresses on behalf of conciliation, and the rights of all the States, were made by Emmanuel Rey (his nephew), Benjamin Rush, Henry Flanders, and others. The position which Mr. Bradford held as a learned lawyer rendered him conservative in view of the coming struggle. From the early age of twenty-one he had been a Democrat in politics. As a statesman he had been tried by his party in Michigan, and was not found wanting in any emergency during his two terms as Senator; and now, as a Railroad President of one of the largest corporations in the Union, with a capital of \$50,000,000, he foresaw the vortex into which the war party on both sides was driving all the resources of the country. With his warm personal friend, Judge Jeremiah Black, he had been a trusted adviser of Mr. Buchanan's administra-

tion. He had great influence with the Southern wing of his own party, who made him First Vice-President of the Charleston Convention. From the commencement of the struggle till its close, he was in constant communication with such men as Edgar Thompson and Asa Packer, whose railway lines were in direct connection with his own road,—the main artery between New York, New England, the great North-west, and the seat of war. To provide the ever-increasing demand for the transportation of troops and supplies required the greatest energy and diligence. The correspondence with Colonel Thomas Scott, who had charge at Washington of the forwarding department, would fill a volume. It reflects great credit on both gentlemen, and shows that Mr. Bradford was able and ready to meet all demands. For five years, rolling stock and the requisite accommodations were found for over one million men going and returning from the seat of war. To maintain the respect and confidence of his Board, who were by no means a unit in politics, the personal regard and esteem of the authorities at Washington, amid the surging tides of success and disaster, unfolds a character of no ordinary power, and a success almost unparalleled in railroad management.

He continued in the office of president, by successive annual re-elections, until his tenure of it was determined, in January, 1872, by a lease of all the works and property of the United Companies of New Jersey to the Pennsylvania Railroad Company for nine hundred and ninety-nine years. At that date these companies consisted not only of the Camden and Amboy Railroad and Transportation Company, the Delaware and Raritan Canal Company, and the New Jersey Railroad

and Transportation Company (companies of New Jersey), but by means of an ownership of a majority of the several stocks, many important railroad companies of New Jersey, such, among others, as the Belvidere Delaware Railroad Company, and its branches; the West Jersey Railroad Company, and its branches; the Camden and Burlington County Railroad Company; the Pemberton and Hightstown Railroad Company; the Freehold and Jamesburg Railroad Company; the Burlington and Mount Holly Railroad Company, and several others. In the negotiations preliminary to the lease of these properties to the Pennsylvania Railroad Company, it became a matter for serious consideration, whether the Pennsylvania Railroad, a "foreign" corporation, *could* lease for nine hundred and ninety-nine years all these different companies thus affiliated in New Jersey.

In association with the Attorney-General of New Jersey, Hon. Abraham Browning, ex-Attorney-General of New Jersey, and Hon. Jeremiah S. Black, ex-Attorney-General of the United States, Mr. Bradford argued before the Chancellor of New Jersey, at Trenton, in September, 1871, a bill praying for an injunction against an execution of the lease. As opening counsel, in behalf of a number of the stockholders, who were complainants, he occupied two days—September 12 and 13, 1871—in the delivery of a learned, able and exhaustive argument. Sir Roundel Palmer, Attorney-General of Great Britain, describes it as "one of the ablest papers ever prepared, and as the basis of all railway law on the subject of leases in Great Britain and America." Over four hundred cases are cited as authorities. It occupies an octavo of nearly two hundred pages. The case involved property to the amount

of \$50,000,000 in New Jersey alone, and the whole subject of railway leases everywhere, besides politico-economical considerations of vast and most important moment to the city of Philadelphia.

The writer listened to that argument, and witnessed its effect on a large audience, comprising many of the ablest lawyers in the country, who were attracted to Trenton by the great interests involved, and the national reputation of the opposing counsel. It is well described by the Chancellor of New Jersey, before whom the case was argued, when he acknowledged "his special indebtedness to the full and elaborate brief of Mr. Bradford, containing a summary of the law on the subject." Copies of this brief are preserved, elegantly bound, in the library of the Middle Temple, and of the British Museum, in the city of London, and in the library of the College of France, at Paris. In 1880, if their appearance indicates their value, the opinion of Sir Roundell Palmer seems to have been merited, by their well-worn look from frequent use.

At the ripe age of sixty-three, after forty-two years' service as a lawyer, Mr. Bradford gave to the world a legal paper which will continue as a monument of his industry, ability and patriotism, for the welfare of future generations. As a specimen of acute reasoning, enlivened occasionally by glowing eloquence and fortified by vast erudition, it is among the finest efforts of his genius. He showed, in this case, that he had no less power with the court, than he possessed in previous years with the jury. He had the power of availing himself of the results of independent investigation and of the knowledge collected by others. He showed a

depth of learning, which would have done honor to an English Chief Justice; and he poured forth all this learning, with the freshness and precision of one who never forgot a principle or decision, an analogy or a fact, which helped his client. He had great caution, so well illustrated in the case of Wilson, when he succeeded in separating his client, a mere youth and an accessory, from Porter, who was the principal in the mail robbery and a hardened criminal. He had great boldness as well as caution; as in his prosecution of the Germantown & Norristown Railroad, when he showed that a corporation had no right to seize private property and plead previous bankruptcy as a statute of limitation, after eight years had elapsed since the act. He possessed keen sagacity and severe logic, which laid the foundation of his great arguments, and when he threw all the strength of his feelings, and all the beauty and richness of illustration which his imagination supplied, into his arguments, both court and jury gave him earnest attention. Of native talent he inherited a large share; his mind had been perfectly trained in the family, at the University, and amid the busy scenes of the forum. His memory was enriched with large stores of knowledge. In closeness of argument, in copiousness and grace of diction, indeed, in all the qualities which conspire to form an able debater, he had few equals, in a court-room or before a political meeting.

His arduous professional labors, united with the duties of his presidency, were now beginning to affect a constitution already impaired by the continuous labors of a long life. His nervous system was so much prostrated that he was compelled immediately to visit Europe, and

to travel there for a period of nine months. During his absence abroad, he was the recipient of marked attentions from leading members of the English aristocracy, bankers, merchants, and railway magnates in Great Britain and on the Continent. On arriving at Liverpool, he found the private car of the Prince of Wales at his service, with transport free throughout his journey. This was in return for a similar courtesy shown to His Royal Highness and the Duke of Newcastle by Mr. Bradford, on behalf of the United Companies of New Jersey, while on their tour through the United States. He returned to his home, June 25, 1872, with health somewhat recruited, but still requiring prolonged rest.

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CHAPTER VII.

Step Backward (A.D. 1771).—Presbytery of Hannover.—Augusta Academy. "Liberty Hall" at Lexington, Va.—Rev. William Graham. General George Washington its Patron. A Class in Theology. In 1831 a College. Society of the Cincinnati Donates \$25,000. In 1865 Revived as a University. Its Funds Renewed.—Mr. Bradford's Bequests to Washington and Lee University.—The Last Decade.—His Mental Activity. Amount of His Literary Labors. Length and Breadth of His Learning. Variety of His Acquisitions.—Returns from Richfield, October, 1883.—"Last Pilgrimage to Mecca."—Failing Health. Final Sickness.—Composure of Mind.—The End.

IN the year 1771, the Presbytery of Hannover, in Virginia, felt the necessity of erecting a seminary of learning. In 1774, the Presbytery organized an academy at Augusta, with Rev. John Brown as principal, and Rev. William Graham, a recent graduate of Nassau Hall (Princeton, N. J.), as teacher. In 1776-77, this academy was removed to Timber Ridge; a board of twenty-four gentlemen, including Mr. Graham, then rector, was appointed; Presbytery reserving "forever the right of visitation." The school was prosperous. The Revolutionary War diminished its numbers, and Mr. Graham removed to a farm near Lexington, still retaining the superintendence of the school. Soon buildings were erected about a mile from Lexington, and "Liberty Hall" was removed to this new location. In 1789, he formed a "class for students in theology," the first ever formed in Virginia. General Washington generously gave one hundred shares of the James River Canal Company to "Liberty Hall," and its name was changed to Washington Academy.

In 1813, by a change in its charter, the academy became a college, and during Rev. Dr. Ruffner's presidency, 1836 to 1848, the Society of the Cincinnati donated \$25,000 to its funds. From 1848 to 1860, Rev. Dr. George Junkin was president, with four professors and two tutors. It should never be forgotten that, after a century of usefulness, this university has furnished as large a number of eminent men to the country, in proportion to its members, as any of our colleges. During the war, 1861 to 1866, as the Shenandoah Valley was the seat of constant strife, the college was closed; but in 1865, General Robert Lee, who had been called by the trustees to the presidency, through an active and successful administration, largely augmented the funds of the University. During the tenure of his son and successor, Gen. George W. Custis Lee, numerous friends of the University in Philadelphia, New York and Chicago have given to it large sums, so that it now possesses valuable and commodious buildings, eight professors and three assistant instructors. To this university Vincent L. Bradford was invited as Professor of Civil, that is, Roman Law,—a chair now held by Professor Randolph Tucker, one of the Democratic leaders in Congress; but Mr. Bradford declined on account of his health. In 1874 the University conferred on Mr. Bradford the degree of LL. D., and in 1880 the degree of D. C. L. This institution, notwithstanding its separation from all formal relations to the Presbyterian Church, has still in its Board of Trustees, of fifteen members, fourteen by education Presbyterians, and of them, twelve are ministers, elders and members of the church; of the Faculty a majority are officers, and members of the same church. The institu-

tion is still a feeder to Union Seminary, Virginia, which is under the care of the presbyteries of Hanover and Lexington. To Washington and Lee University, Mr. Bradford, after certain annuities to personal friends and relations, two of whom are clergymen and doctors of divinity, left one-half of his estate, on the death of his widow, to found two professorships, one of civil (Roman) law; the other, of international law; beside his law library, a large and valuable collection, as the nucleus of a University Law Library, and his gallery of paintings, even more valuable than his law library, to establish an art gallery in the University.

During the last twelve years of his life, after his retirement, his great object was in what form he could best serve God and benefit his fellow-men, with the estate now at his disposal. After his return to Philadelphia from Michigan, he was attracted to the Church of the Epiphany by the preaching of his warm personal friend, Rev. J. Henry Fowles, A. M., a graduate of Yale, in the same class with President Porter, Bishop Kip of California, and Bishop Clark of Rhode Island; originally a Congregationalist, a high Calvinist, remarkably logical in his sermons, and amiable in his Christian character. By courtesy he was admitted to the communion, and not "by confirmation;" to use his own phrase, "having never felt the power of a bishop's lawn." During his residence in Germantown, owing to his constant cough, he was rarely in church, years often intervening, and throughout the last decade of his life hardly ever. But in his own home he held a church in the house, and entertained angels unawares. The frequent visits of evangelical clergymen made his

house a Bethel, and his constant gifts to them and their churches, without distinction of sect, showed the breadth and variety of his Christian charity. What he could not accomplish by his voice, he did with his pen. He continued his studies, read constantly, trimmed the midnight lamp, and was the author of numerous essays, reports and lectures, one of which, written in behalf of the Presbyterian Church at Richfield Springs, was delivered before a large audience composed of the Governors, Senators, College Presidents and the *élite* of wealth and fashion who frequent that sanitarium. If all the papers which he has written, while an invalid, on literary, moral, philosophical, financial, legal and political subjects, which have at various times appeared in newspapers, periodicals and pamphlets, were collected and published in book form, they would fill volumes.

He was an omnivorous reader. He lived upon books, and compared his life "to the supper of hens in Boccaccio," reading here, reading there; nothing but books, with different sauces. No branch of knowledge was overlooked. He sat in the broad shade of his garden; Aristophanes and Tacitus took their turns with Justinian and Virgil. He could dip into the works of Froissart, and drag the great deeps of history. He kept a watch upon the shore, and cast in his net for a draught of Pliny's Epistles and Martial. He made the past his own present, and could describe the peacock of Lucullus, or write a prescription of Æsculapius. He knew the princes of Tuscan song. Dante affected him with a sort of religious awe, and Petrarch was his companion. The French literature had a large share in his regard. His taste enjoyed the philosophy of Montesquieu, the

luxuriance of Rousseau, and the comedies of Molière. Of English authors he had a large collection. He had visited the remoter springs, and analyzed their waters. He never took up Spenser without reading his “Fairie Queen” for a considerable time; for its author was, to his fancy, what Homer had been to the rhetoric of Bossuet. He was inflamed and fed by it. He exhorted his friends to read Dryden and Pope, but be blind to their faults; to know that Akenside and Thomson had written poetry, and that Goldsmith should be committed to memory. He would have made what the Germans term an extraordinary professor in history, literature or law. Such were the treasures and graces of his mind, his subtile taste, his deeper thought, his vigorous judgment, and his superior learning, all combined to form a genius, which possessed qualities apparently incompatible.

We have thus sketched, far too imperfectly, the prominent features in the life and character of the Hon. Vincent L. Bradford, LL.D., D. C. L., as legislator, lawyer and railroad president. Those who knew him can easily fill up the outline from their own pleasing recollections; those who did not know him will fail to find here a finished portrait. But “there is one event to the righteous and to the wicked,” and death marks for his prey, under different forms, those whom he introduces to far different scenes. When our Lord sees that his followers have had enough of discipline on earth, that he may deliver them from the coming evil, he takes them to some higher department of his kingdom, “that they may behold his glory.” Mr. Bradford, on returning to his home, in October, 1883, from Richfield Springs, showed that he was seventy-five years of age.

A loss of power in the lower extremities, inability to go up stairs, a desire to seek aid from others when making exertion, proved that he was approaching "those bounds which he could not pass." As the spring of 1884 advanced, instead of gaining strength he was more and more debilitated. Certain local infirmities increased his pain. Still his friends hoped that his vigorous constitution would resist the progress of disease; but as July passed on Mr. Bradford sought his chamber and bed, and the inevitable result of his sickness could be foreseen. But he was not agitated by its announcement. Having arranged his temporal concerns, he cheerfully resigned himself to the will of God. His Presbyterian Hymn Book and the Bible were always on the table by his bedside, and constantly perused with attention. On the Sabbath preceding his departure, the writer spent the afternoon with him by special request. His views of the plan of salvation, the preciousness of Christ, and the completeness of the atonement, were remarkably clear. While modestly speaking of his own hopes, his confidence in the Redeemer was strong and unwavering. It was delightful to visit him in his sickness, to witness his composure, and to see him calmly awaiting the time of his departure.

On the 7th of August, 1884, at 11.30 P. M., Mr. Bradford expired, apparently with slight suffering, and, like the patriarch of old, surrounded by relatives and friends "his heart *fixed*, trusting in the Lord."

"So fades a summer cloud away,
So sinks the gale when storms are o'er;
So gently shuts the eye of day;
So dies a wave along the shore."

In Chancery of New Jersey.

BETWEEN

JOHN BLACK AND OTHERS,
Complainants,

AND

THE CAMDEN AND AMBOY RAILROAD AND
TRANSPORTATION CO. AND OTHERS,
Defendants.

BILL OF COMPLAINT.

Rule to show cause why an Injunction shall not issue, etc. Filed
and made, respectively, June 23d, 1871.

ARGUMENT OF VINCENT L. BRADFORD, Esq.

Of Counsel with the Complainants,

On the hearing of the Rule to show cause, why an Injunction
shall not issue, etc.

“IN CHANCERY OF NEW JERSEY.”

An Appeal to the Chancellor to show cause why the Corporate existence of the United Companies of New Jersey should not cease to exist, by a lease to the Pennsylvania Railroad Company for nine hundred and ninety-nine years.

WITH deference to the Court. After a career of over thirty-eight years of unexampled usefulness and success, the corporate existence of the Camden and Amboy Railroad and Transportation Company, the Delaware and Raritan Canal Company, and the New Jersey Railroad and Transportation Company, (companies of New Jersey,) is trembling in the scales, which are in the hands of the Chancellor of New Jersey. If the Chancellor so wills, these corporations will, practically, be among the things that are past, and be numbered with forgotten events.

It is the official duty, as well as the pride and pleasure, of the counsel for the complainants, on this occasion, to demonstrate conclusively to the Chancellor, that the present appeal to him, for the aid and protection of the preventive remedy of injunction against a contemplated and irreparable wrong, is warranted by fact and law.

They therefore respectfully submit, I. That the aforementioned companies of New Jersey, sometimes termed “the United Companies of New Jersey,” severally or collectively, prior to March 17, 1870, did not possess any franchise or power to make or execute any lease of their canals and railroads, with their

appurtenances, and of all their property and interest, real, personal, and mixed, for the purposes and objects contemplated in said lease. II. That they, now and at any time subsequent to March 16, 1870, do not possess any franchise or power, severally or collectively, to make and execute the lease referred to in the bill, or any similar lease. III. The lessee named in the said lease (the Pennsylvania Railroad Company) does not possess any power or franchise to become lessee in the said lease. IV. The said lease or any similar lease is a violation of the Constitution and laws of the State of New Jersey. V. The said lease or any similar lease will, if executed and carried into effect, be contrary to equity and good conscience, and tend to the manifest wrong and injury of the complainants. VI. The complainants, by reason of such manifest wrong and injury, are without adequate remedy other than the protection, by the preventive writ of injunction, prayed for in the said bill, and are, under and by virtue of the Constitution of the United States, the Constitution of the State of New Jersey, and the laws of New Jersey, entitled to the protection afforded by said writ of injunction.

We proceed to establish the foregoing propositions, in their respective order, to wit:

I. The companies named as lessors, in the proposed lease, severally or collectively, prior to March 17, 1870, did not possess any franchise or power to make or execute any lease of their canals and railroads, with their appurtenances, and of all their property and interest, real, personal, and mixed, for the purposes and objects contemplated in said lease. The powers conferred therein, severally and collectively, may all

be classified under three heads; and the power to lease, in the manner contemplated in and by said lease, cannot be found under either of said heads. The heads of classification are :

1. A franchise or power "to sue and be sued, to have perpetual succession, to possess capital stock divided into shares;" a franchise or privilege "that their shares of capital stock shall be personal estate; that their several and collective affairs shall be managed by directors annually elected;" and "that they shall take and use private property," in the manner provided by the Constitution of New Jersey, for the public uses of making canals and railroads, with their appurtenances, respectively designated in said incorporating acts, and, "for the same purposes, shall purchase and otherwise procure and take, have, hold, possess, and enjoy all lands, and other real and personal estate, which shall be necessary and proper, and shall be endowed with all other powers, privileges, and franchises necessary for constructing and completing respectively the canals, railroads, and other public works, with their several appendages," mentioned in their respective acts of incorporation, which said improvements "shall be public highways." 2. Franchises or powers to purchase and hold other property, real, personal, or mixed, not strictly appurtenant to, or necessary for, the gratification of the aforementioned public uses, but connected therewith, as affording facilities to the transaction of the proper business of the corporations, or in furtherance of other affiliated public uses of the State of New Jersey.

3. Franchises or powers for the private benefit of the respective shareholders of said corporations, in connection with the performance of the public duty as-

signed to them as corporators, such as, "to provide for the transportation of passengers and property, on their railroads and canals and elsewhere," as mentioned in said respective acts of incorporation; "to charge fare, freight and tolls, for the transportation of persons and property thereon," not exceeding certain limits prescribed in said acts; "to divide the net profits of business among the respective shareholders, in the ratio of the stock held by them;" and, in lieu of any other tax and impost, to pay certain fixed amounts of money to the State of New Jersey, etc.

Nowhere, among the preceding classified and enumerated franchises and corporate powers, can be found any *express power to lease*, in the manner proposed. Such power to lease, in the manner proposed in the lease referred to in the bill of complaint, cannot be *implied*, because it is not derivable from any of the express franchises or powers enumerated or classified under the first or third of the aforementioned heads of classification, nor is it derivable, from "the franchise or power to purchase and hold property, real, personal, and mixed, not strictly appurtenant to the public uses entrusted to said corporations, but connected therewith, as affording facilities in the transaction of their business as common carriers, or as aiding other railroad or canal companies affiliated with them," mentioned, under the second head of the aforesaid classification.

A power *to lease* the respective canals and railroads constructed by them, or either of them, or any of the appurtenances of said *public uses*, is not one of the properties or powers which are conferred on them by their respective acts of incorporation, either expressly or impliedly, or as incidental to their corporate existence.

He who has the use of a piece of ground has liberty to go into it, to use his right, but without giving any unnecessary trouble to the proprietor. Seeing the right of use is limited to the person of him to whom the use is granted, he can neither sell, let to hire, nor give away a right which is personal to him, and which passing to another person might be more chargeable or more inconvenient to the proprietor. Domat's Civil Law (folio edition), vol. 1st, Book 1 Tit. 11, "of usufruct," s. 2, pl. 3 & 4, p. 197. A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its incorporation confers upon it, either expressly or as incidental to its very existence. *Dartmouth College vs. Woodward*, 4 Wheaton's R. 636, and other cases cited in Angell & Ames on Corporations, 9th edition, sec. 3, p. 2. A corporation is defined by Lord Holt, C. J., as an *ens civile, corpus politicum, persona politica, collegium, universitas, jus habendi et agendi*. Anon. 3 Salk. 102. An act of incorporation is an *enabling* act; it gives the body corporate all the power it possesses; it enables it to contract; and when it prescribes the mode of contracting, that mode must be observed. Angell & Ames on Corporations, 9th edition, sec. 291, p. 287; *Williams vs. Chester R. R. Co.*, Exchr. R. 1851, 5 Eng. L. & Eqs. 503.

A corporation has not any other powers than such as are specifically granted, or such as are necessary for the purpose of carrying into effect the powers expressly granted. Its existence, powers, capacities, and mode of exercising them, must depend, upon the law of its creation, and, upon its objects. *Downing vs. Mt.*

Wash. Road Co., 40 N. H. R. 230 ; 1 Redf. on Law of Railways, (3rd ed.,) sec. 130, pl. 12, p. 518. The general practice in the United States is to specify the powers with which it is intended to endow the society or company incorporated, and those powers will be found to be given in reference to the object in view in creating the corporation. If, for instance, the object of the corporation is to insure property, it cannot exercise the power of acting as a banking institution. The exercise of the corporate franchise being restrictive of individual right cannot be extended beyond the letter and spirit of the act of incorporation. The well-settled and general rule, in this country, is that a corporation is confined to the sphere of action limited by the terms and intention of the charter. Angell & Ames on Corporations, 9th edition, sec. 111, p. 87; *Penobscot Corporation vs. Lampson*, 16 Maine R. 224; *Commis. of Roads vs. McPherson*, 1 Speers, 218; *Little Miami R. R. Co. vs. Nailor*, 2 Ohio St. 235; *Louisville B. T. Co. vs. Nashville T. Co.*, 2 Swan, 282; *Beatty vs. Knowler*, 4 Pet. 162; *Jansen vs. Ostrander*, 1 Cow. 686; *Auburn P. R. Co. vs. Douglass*, 5 Selden 444; *Penna. R. R. Co. vs. Canal Commrs.*, 21 Penna. St. R. 9; *Commonwealth vs. Erie R. R. Co.*, 27 Penna. St. R. 339; *R. R. Co. vs. Payne*, 8 Rich. 177. A corporation and an individual stand upon very different footing. The latter, existing for the general good of society may do all acts and make all contracts which are not, in the eye of the law, inconsistent with the great purpose of his creation; whereas the former, having been created for a specific purpose, not only cannot make any contract forbidden by its charter, (which is, as it were, the law of its nature,) but, in

general, cannot make any contract which is not necessary, either directly or incidentally, to enable it to answer that purpose. Ang. & Am. on Corp., 9th ed., sec. 256, pp. 236-7. A legislative amendment to a charter which superadds to the original undertaking an entirely new enterprise, impairs the contract of subscription to a corporation. *Everhart vs. West Chester and Philadelphia Railway Co.*, 28 Penna. St. 339, cited in Redf. Am. Railway Cases, 181; *Hartford and New Haven Railway Co. vs. Croswell*, 5 Hill 383; accord several cases cited in note to said last referred-to case, to be found on pp. 201, 202 of Redf. Am. Railway Cases. Thus, where a company was incorporated for the purpose of establishing and conducting a line of steamboats, vessels and stages, &c., for the conveyance of passengers between certain places, a contract with such company for the breaking of ice and towing of vessels through the ice broken to another place, is invalid, and cannot be enforced against them. Ang. & Am. on Corp., 9th ed., p. 237, and cases in foot-notes 2, 3 and 4; *Penna. Co. vs. Dandridge*, 8 Gill & Johns., 248; *Abbott vs. Baltimore Steam Packet Co.*, 1 Md. Ch. R. 442. A court of equity will interfere, to prevent a disposition of the property of a corporation, *for other than corporate purposes*. *Binney's Case*, 2 Bland's Ch. 142; *Keane vs. Johnson*, 1 Stock. 401; *Beman vs. Rufford*, 1 Simons (N. S.) 550; S. C., 6 Eng. L. & Eq. 106. An agreement that one railway company shall work a particular line of railway, and that the property and plant shall be handed over, for that purpose, implies a delegation of power, which cannot be made and accepted without authority from Parliament, and which will be enjoined against as illegal; and a con-

tract, by the directors of a company, to purchase the trade and good-will of another company, is not binding, unless authorized by the charter or deed of settlement of each company, and made according to its provisions. Ang. & Ames on Corp., 9th ed., sec. 256, pp. 238-9; *Winch vs. Birkenhead R. R. Co.*, 5 De G. & S. 562; 13 Eng. L. & Eq. 506; *Great Northern R. R. Co. vs. Eastern Counties R. R. Co.*, 9 Hare, 306, 12 Eng. L. & Eq., 224; *Earnest vs. Nichols*, 6 H. L. Cases, 401.

Nor can a company enter into a contract fixing and regulating the future traffic that may be carried upon a line of railway, which the company may thereafter be empowered to construct, so as to give another company an interest in such traffic and profit. *Midland R. R. Co. vs. London R. R. Co.*, Law Rep. 2 Eq., 524. In deciding whether a corporation can make a particular contract, we are to consider, in the first place, whether its charter or some statute binding upon it forbids or permits it to make such contract; and, if the charter and valid statutory law are silent upon the subject, in the second place, whether a power to make such contract may not be implied, on the part of the corporation, as strictly or incidentally necessary to enable it to fulfill the purpose of its existence, or whether the contract is entirely foreign to that purpose. Ang. & Am. on Corp., 9th ed., sec. 256, pp. 240-41. See also sec. 111, p. 87; sec. 271, p. 256. The directors of a railway company have not any power to guarantee the profits and secure the capital of an intended steam packet company, which was to run in connection with their railway; though the purpose was to increase the traffic of their railway. Ang. & Am. on Corp., 9th ed., sec. 258, p. 243; *Coleman vs. Eastern*

Counties R. R., 10 Beav. 1. Generally, a railroad company may make all contracts that are necessary and useful to enable it to carry on the business, or accomplish the objects of its incorporation. Ang. & Am. on Corp., 9th ed., sec. 271, p. 259; Old Colony R. R. Co. *vs.* Evans, 6 Gray, 25.

A railroad company, which is incorporated for the purpose of building and constructing a railroad between two given points, cannot buy a steamboat to run from one of these points in connection with their road; but it may, if authorized to transport passengers beyond its termini. Pearce *vs.* Madison R. R. Co., 21 How. 441; Colman *vs.* Eastern Counties R. R. Co., 10 Beav. 1. A court of equity will not lend its aid to enforce a contract which is against the spirit, if not the terms, of the charter. Shawmut Bank *vs.* Plattsburg R. R. Co., 31 Vt. R., 491; Bank of Mich. *vs.* Niles, 1 Doug. (Mich.) R., 401, affirming decision, in the same case, in 1 Walker's Mich. Rep., 99. Johnson *vs.* Shrewsbury & B. Railway, 19 Eng. L. & Eq., 584; London B. & South Coast R. *vs.* L. & S. W. R. & Portsm. R., 5 Jur (N. S.), 1801; Troy and Rut. R. *vs.* Kerr, 17 Barb., 581; Shrewsbury and B. Railway *vs.* L. & N. W. R. (House of Lords, May, 1857), 29 Law Times, 186; Shrewsbury and B. Railway *vs.* London & N. W. & Shropshire Union Railway, 21 Eng. L. & Eq., 319; S. C. 1 Eng. L. & Eq., 122. Two or more corporations cannot "*consolidate their stock*," or their "*business*" (and thus enter into co-partnership), unless authorized by express grant or necessary implication. And where two corporations are created by adjacent States with the same name for the construction of a canal in both cases, and are afterwards united by the legislative acts

of both States, this does not merge the separate corporate existence of such corporations, but only creates *a unity of stock and interest*. Ang. & Am. on Corp., 9th ed., sec. 272, p. 260, foot-notes 1 and 2.

It is not contended that the aforementioned companies have not a power to sell, lease or otherwise dispose of any property, real, personal, or mixed (which is wholly disconnected from, and not, in any way or manner, appurtenant to, the object of "making and perfecting an expeditious and complete line of communication, partly by railroad, and partly by water, between the cities of Philadelphia and New York," and not necessary or proper, for "constructing and completing their canals and railroads, respectively," "for operating the same," or for performing any other public corporate duty, such as buildings and structures (other than depots and station-houses, wharves and landings, appurtenant to said canals and railroads), floating-stock, bonds and stock of other companies, and such like, which are acquired and held, by said corporations, severally and collectively, by express authority of law, for their own private accommodation, for investment of surplus earnings, or for the merely convenient transaction of their private business, as common carriers. Such "*jus disponendi*" is incidental to the franchise or power expressly bestowed on them to acquire, purchase, and hold such aforementioned property, real, personal and mixed, as a private corporation, for purely private purposes, in no way connected with, necessary, or proper to, a performance of the public duty, or a satisfaction of the public uses, franchises, privileges, or powers assigned and entrusted them by their respective acts of incorporation; for a

corporation authorized to dispose of its property may, in general, dispose of any interest in the same it may deem expedient, having the same power, in this respect, as an individual. Thus, it may lease, grant in fee, in tail, or for term of life, etc. Ang. & Am. on Corp., 9th ed., sec. 191, p. 160; *Reynolds vs. Stark's Co.*, 5 Ohio R., 205; *Featherstonhaugh vs. Lee Moor Porcelain Clay Co.*, Law Rep., 1 Eq., 318. A railroad corporation, which is authorized to hold lands, may lawfully grant lands held by it, if they are not required for its railroad purposes. *Hendee vs. Pinkerton*, 14 Allen, 381.

It is simply contended that "a right to dispose of" (by way of lease, or other grant or contract) property or interest acquired or held (under all or any of the franchises, privileges, and powers necessary, "to survey, locate, construct, and complete the railroads of said corporations, with all their necessary appendages, to construct and complete canals and feeders with their proper appendages and appurtenances," which railroads and canals are declared to be "public highways of the State of New Jersey," and for these purposes "to purchase and otherwise procure, and to take, have, hold, possess, and enjoy all lands and other real and personal estate, which shall be necessary or proper, and to charge fare, freight, and toll for the transportation of persons and property thereon," granted to, conferred, or bestowed on, the aforesaid corporations, severally or collectively, by their respective acts of incorporation), is not to be implied, because of the nature and character of those franchises, privileges, and powers, and because of the purpose and object for which they were granted, conferred, or bestowed. Those franchises,

privileges, and powers relate to and concern, exclusively, "artificial highways" of the State of New Jersey, and "public uses" of the people of New Jersey, in which every individual citizen of New Jersey has "a freedom or franchise," namely, the right to go upon, in order to use and employ, said public highways, respectively, for persons and property respectively, on paying reasonable fare, freight, and toll, respectively, to said corporations, in the way and manner prescribed by the respective charters of said corporations. Said corporations are trustees for the people of New Jersey of said franchises, privileges, and powers, which are inalienable, save by the consent and authorization of such *cestui que* trusts constitutionally and legitimately expressed. *Regina vs. South Wales R. R. Co.*, 14 Q. B., 902, cited in note 4 to sec. 192, p. 164, of *Ang. & Am. on Corp.*, 9th ed.

Such an artificial being as a corporation, only the law can create; and, when created, it cannot transfer its own existence into another body; nor can it enable natural persons to act in its name, save as its agents, or as agents of the corporation acting, in conformity with the modes required or allowed by its charter. The franchise to be a corporation is, therefore, not a subject of sale and transfer, unless the law, by some positive provision, has made it so, and pointed out the mode in which such sale and transfer can be effected. *Hall vs. Sullivan R. R. Co.*, U. S. C. C. N. H., 1857, 21 Law Reporter, 138. Where extensive public trusts grow out of a legislative grant, as in the case of a railroad corporation, there is an implied obligation against a voluntary assignment. *Reg. vs. Comm's of Norfolk*, 15 Q. B., 549; n. 18 to sec. 142, pl. 7, on p. 593 of 1 Redf. on

Law of Railways (3d ed.); *Coe vs. Col., P. & Ind. R. R.*, 10 Ohio St. 372. The franchise which authorizes a number of persons to be incorporated and to subsist in a body politic, with power to maintain a perpetual succession, is not alienable or transferable, without direct and positive legislative authority. 2 Redf. on Law of Railways, 3d ed., sec. 235 a., pl. 2, p. 578; pl. 3 & 4, pp. 579, 580. The consent of the legislature is indispensable to the creation of a valid and effective railway mortgage. 2 Redf. on Law of Railways (4th ed.), sec. 235, pl. 13, p. 480. A franchise, to be a corporation, is the life of the corporation. *Adams vs. Boston, Hartford & Erie R. R. Co.*, U. S. Dist. Ct. District of Mass., Dec'r, 1870, cited in appendix to Ang. & Am. on Corp., 9th ed., pp. 822-3. Corporate franchises, by their very nature, cannot be enlarged by implication. They must be strictly construed, according to the letter and very spirit of the grant. For, a corporation is a body created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues the same, notwithstanding the change of the individuals, who compose it, and is, for certain purposes mentioned in its act of incorporation or charter, considered as a natural person. Ang. & Am. on Corp., 9th ed., sec. 1, p. 1.

A corporation, or a body politic or body incorporate, is a collection of many individuals united in one body, under a special denomination, having perpetual succession, under an artificial form, and vested, by the policy of the law, with a capacity of acting in several respects as an individual, according to the design of its institution, or the power conferred upon it, either at the time of its creation, or at any subsequent period of

its existence. 1 Kyd on Corporations, p. 13, cited in Ang. & Am. on Corp., 9th ed., sec. 2, p. 1. The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men, to enable them to hold property, to sue and be sued, &c., and to act for the promotion of the particular object of their incorporation as set forth in the legislation, which calls it into existence. Per Ch. J. Marshall in *Dartmouth College vs. Woodward*, 4 Wheaton's R. 636; *Providence Bank vs. Billings*, 4 Pet. 562, cited in Ang. & Am. on Corp., 9th ed., sec. 3, p. 2. A corporation is a franchise, and each individual of the corporation has a franchise or freedom. The word "franchise," in its most extensive sense, is expressive of great political rights, as the right of being tried by a jury, the right a man may have to an office, and the right of suffrage. A corporation is a political person capable, like a natural person, of enjoying a variety of franchises. It is, to a franchise, as the substance to its attributes. It is something, to which many attributes belong, but is itself something distinct from these attributes. 2 Black. Com. 37; 1 Kyd, 15, cited in Ang. & Am. on Corp., 9th ed., sec. 4, p. 2.

Franchises are special privileges, conferred, by government, on individuals, and which do not belong to the citizens of the country generally, of common right, and, in this country, a franchise cannot be held, which is not derived from the law of the State. *Bank of Augusta vs. Earle*, 13 Pet., 519, cited in Ang. & Am. on Corp., 9th ed., sec. 4, pp. 2, 3. A corporation is strictly a political institution; it is governed by the existing laws in force at the time of its creation in reference to the ownership

of property and the contracting of obligations, in the same manner as natural persons, except in so far as such laws are modified and changed by its charter. Ang. & Am. on Corp., 9th ed., sec. 6, p. 3. A corporation may be considered, in a two-fold aspect: in the abstract, and in the concrete. In the abstract, it is not a person nor an animated body, but it is only a kind of feigned or intellectual entity, or the representative of a body animated. It exists merely in idea, and has neither soul nor body. In the concrete, it is taken for the particular members of such corporation. The latter may die, but the body corporate does not. Ang. & Am. on Corp., 9th ed., secs. 3 and 4, p. 4. A corporation is an intellectual body, entity, or artificial existence, composed of individuals and created by law, a union of individuals under a common name, and the members of which are so capable of succeeding each other, that the body (like a river) continues always the same, notwithstanding the change of the parts that compose it. Private corporations are created by an act of the legislature, which, in connection with its acceptance, is regarded as a *contract or compact*, and one which, so long as the body corporate faithfully observes, the legislature is constitutionally restrained from impairing, by annexing new terms or conditions onerous in their operations, or inconsistent with the reasonable construction of the compact or contract. Ang. & Am. on Corp., 9th ed., p. 22.

The railroad of a railroad company is an artificial highway of the Commonwealth, and the buildings and structures thereon erected by such corporation, (such buildings and structures being reasonably incident to the support of the road, or to its convenient and advantageous uses,) are not liable to be taxed. The company

has not the general power of disposal incident to the absolute right of property. They are obliged to use it, in a particular manner, for the accomplishment of a well-defined public object. They are required to render frequent accounts of their management of the property to the legislature, and they are bound ultimately to surrender it to the public, at a price and upon terms established. Treating a railroad, then, as a public easement, and the works erected by the corporation as *public works* intended for public use, it is well established, that, to some extent, at least, the works necessarily incident to such public easement are public works, and as such, exempted from taxation. Such has been the uniform practice in regard to bridges, turnpikes, and highways, and their incidents, and also, in regard to other public buildings and structures of a like kind. Ang. & Am. on Corp., 9th ed., sec. 449, p. 468; Worcester *vs.* Western R. R. Co., 4 Met., 564. Although a railroad is a private corporation, its railroad is a public highway. Ang. & Am. on Corp., 9th ed., p. 468, foot-note 1; Roanoke R. R. Co. *vs.* Davis, 2 Dev. & B. 451. See Rex *vs.* Pease, 4 B. & Ad. 31. It is only such property belonging to a railroad corporation, as is appurtenant and indispensable to the construction and preparation of the road for use, that can claim to be exempted from taxation. Other works and conveniences, such as warehouses, coal-yards, board-yards, coal-shutes, and extensive machine shops, form no part of the road, and are not exempt from taxation. See Ang. & Am. on Corp., 9th ed., sec. 450, p. 469.

The franchise of maintaining a bridge across a navigable river, and exacting toll, is a franchise, of a public nature; and *quo warranto* or information in nature of

quo warranto is an appropriate remedy for any persons aggrieved by a non-compliance on the part of the grantee of the franchise. Ang. & Am. on Corp., sec. 736, p. 750.

Franchise is a word of extensive signification, and is defined, by Finch, to be "a royal privilege in the hands of a subject." In this country, a privilege or immunity of a public nature, which cannot legally be exercised without legislative grant, is a franchise. The State or Commonwealth stands in the place of the king, and has succeeded to all the prerogatives and franchises proper to a republican government. With us, therefore, to assume a power which cannot be exercised without a grant from the sovereign authority, or to intrude into the office of a private corporation, contrary to its charter, is, in a large sense, to invade the sovereign prerogative, to assume or violate a sovereign franchise. Ang. & Am. on Corp., sec. 737, p. 753.

II. The aforementioned corporations of New Jersey named as lessees in the proposed lease, now and at any time subsequent to March 16th, 1870, severally and collectively do not possess any franchise, privilege or power to make and execute said lease, or any similar lease. It is alleged by the defendants, or some of them, that on the 17th of March, 1870, the legislature of New Jersey, by an act approved on that day, conferred on said companies a franchise, privilege, or power, to make and execute the said lease. The act referred to is in the following language, viz.: "An act to enable the United Railway and Canal Companies to consolidate their stock, and to consolidate or connect with other companies. Whereas, the Delaware and Raritan Canal Company, the Camden and Amboy Railroad and

Transportation Company, and the New Jersey Railroad and Transportation Company, sometimes called the United Companies and the United Railway and Canal Companies, are identified in interest, and have also an identity of interest, with the Philadelphia and Trenton Railroad Company and other companies, therefore :

“ Be it enacted, by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for the said United Companies, by and with the consent of two-thirds in interest of the stockholders of each, expressed in writing and duly authenticated by affidavits, and filed in the office of the Secretary of State, to consolidate their respective capital stocks, or to consolidate with any other railroad or canal company or companies, in the State, or otherwise, with which they are or may be identified in interest, or whose works shall form with their own, continuous or connected lines, or, to make such other arrangements, for connection or consolidation of business, with any such company or companies, by agreement, contract, lease, or otherwise, as to the directors of said United Companies may seem expedient: Provided, That, if any stockholder or stockholders, being such at the time of making any such consolidation, agreement, contract, lease, or other arrangement, shall be dissatisfied with the same, the said companies shall pay, to such dissatisfied stockholder or stockholders, the full value of his, her, or their stock, immediately prior to such consolidation, agreement, contract, lease, or other arrangement, to be assessed by three disinterested commissioners appointed for that purpose, by the Supreme Court, or Court of Chancery of this State, on the application of either party made, upon twenty days’ notice; but, the said

companies shall not be compelled to pay for stock of any such dissatisfied stockholder or stockholders, unless he or they shall give written notice of such dissatisfaction to the president, secretary, or treasurer of the company, whose stock shall be held by him or them, within three months after such consolidation, agreement, contract, lease or other arrangement shall have been made and consented to, by the requisite number of stockholders: *Provided further*, That no such consolidation, agreement, contract, lease, or other arrangement shall have the effect, or be construed to release or discharge the said United Companies, or any or either of them, or any company or companies with which any such consolidation, agreement, contract, or lease may be made, from any taxes, liabilities, obligations, or duties, which they or either of them may be subject or liable to, either to this State, or to any other person or persons.

“2. *And be it enacted*, That this act shall take effect immediately, and shall be deemed a public act; and the said consent of stockholders herein and hereby required to be authenticated and filed in the secretary's office when so authenticated and filed, together with the fact of the amount of stock held by each, the same being also authenticated by affidavit, shall be sufficiently proved in all courts, and places where the same may come in question, (unless the contrary be made to appear) by the original affidavit so filed, or by a duly certified copy thereof, made by the Secretary of State.”

The complainants deny this allegation; because,

1st. The title, preamble and enacting clauses of said act demonstrate that its proposed application to said

lease is an entire perversion of it. It is a safe and reasonable canon of judicial interpretation and construction of a statute, that, if its language and spirit are fully satisfied by a different construction, or, on a different hypothesis than the one contended for, such latter construction is excluded and inadmissible, for "*expressio unius est exclusio alterius.*" The true hypothesis of the purpose and object of said statute, as the complainants say, is "to enable the Delaware and Raritan Canal Company, the Camden and Amboy Railroad and Transportation Company, and the New Jersey Railroad and Transportation Company, sometimes called 'the United Companies' and 'the United Railway and Canal Companies,' to consolidate their respective capital stock, or, to consolidate with 'the Philadelphia and Trenton Railroad Company, or with any or all of the railroad companies of the State of New Jersey,' (whose works were constructed by pecuniary and other means furnished by them, which companies are commonly termed, by them, auxiliary companies,) with which they conceive themselves to be 'identified in interest, or whose works form, with their own, continuous or connected lines,' or 'to make such other arrangements *for connection or consolidation of business* with any such company or companies, by agreement, contract, *lease*, or otherwise, as to the directors of the said United Companies may seem expedient, provided that the consent of two-thirds in interest of the stockholders of each company, expressed in writing and duly authenticated by affidavit and filed in the office of the Secretary of State shall have been previously obtained and provided,'" as is further set forth in said act.

It is a well-known fact recognized in the public laws of New Jersey, and within the personal knowledge of every citizen of New Jersey, that the United Companies of New Jersey influence, by means of an ownership of a majority of the several stocks thereof, many important railroad companies of New Jersey, such, among others, as "the Belvidere Delaware Railroad Company," and its branches, "the West Jersey Railroad Company" and its branches, "the Camden and Burlington County Railroad Company," the Pemberton and Hightstown Railroad Company," "the Freehold and Jamesburg Railroad Company," "the Burlington and Mount Holly Railroad Company," and several others, and that they have already leased several of the smaller roads, which they have been mainly instrumental in constructing in New Jersey without the dissent of any stockholder, in said leased companies, or of their own several companies.

It is also an equally well-recognized fact, that all such railroads have the same gauge, with the railroads of the United Companies, and form continuous or connected lines, with said railroads, being practically branches or feeders of the main trunks or stems of the railroads of the United Companies, and constitute a system or network of railroads (of which the United Companies are the originators, the motive power and the influence), permeating seventeen out of the twenty-one counties of New Jersey. It is highly probable, that a strong desire has existed and does still exist, on the part of many stockholders of said United Companies of New Jersey, to unite under a simpler organization, those various railroad companies, to render less expensive and more efficient the entire system, by

“a consolidation of stock and business” as allowed, in said act. To effectuate such a desire or policy the act may be said to be apposite and sufficient (notwithstanding that the assumption contained in it, “that there exists an identity of *corporate* interest, on the part of the United Companies, with the Philadelphia and Trenton Railroad Company,” may be, both in fact and in law, erroneous, and therefore the purpose and intent of said act, in that regard, may utterly fail), provided, that the respective stockholders of the aforementioned several corporations *unanimously* accept said act.

2nd. Said act does not authorize or sanction a lease of the franchises, or of any of the franchises of the United Companies, or either of them, in any way or manner, expressly or by legal implication, to “the Pennsylvania Railroad Company.” That company is not named in said statute, nor is a lease to “the Pennsylvania Railroad Company,” indirectly authorized or sanctioned by the language of said enactment. The *works* of that company are not “in connection or continuity” with the *works* of “the United Companies of New Jersey.” They do not form “continuous and connected lines, with the works of the United Companies of New Jersey.” The *works* of three distinct and independent corporations, to wit: Of “the Trenton Delaware Bridge Company (partly a New Jersey corporation and partly a Pennsylvania corporation), of “the Philadelphia and Trenton Railroad Company,” and of “the Connecting Railway Company” (both Pennsylvania corporations) lie between the works of “the United Companies of New Jersey” and those of “the Pennsylvania Railroad Company,” and separate them by an interval of at least thirty-one miles. How, then, can

“the continuity or connection” required by the statute be said to exist between the works of “the United Companies of New Jersey” and those of “the Pennsylvania Railroad Company,” respectively? Again, the statute refers to railroad companies, in the State of New Jersey, “or otherwise.” The word “otherwise” is not an adverb of place or situation. It here has not the meaning of the words “otherwhere” or “elsewhere,” which are synonymous words. Lexicographers agree, that no such meaning attaches to the word “otherwise,” which signifies “in a different manner,” “by other causes,” “in other respects.” It is used with such signification in a subsequent part of the same act. Substitute such correlative renderings, or such significations, of “otherwise,” and they are wholly inapplicable, without meaning, and, in legal parlance, are insensible here. If so, that word is not to be regarded as it appears in this part of the statute. This portion of the statute must be read without it. If the legislature had intended to authorize a lease between “the United Companies of New Jersey” and a foreign corporation, they should have either expressly named such corporation, or have used the word “elsewhere,” or the word “otherwhere,” in the connection in which the insensible word, “otherwise,” appears. It is not in the rightful power of any court to supply language not used by the legislature, except where, of logical necessity, such language is implied from the context. To erase the word “otherwise,” and substitute the word “elsewhere,” or the word “otherwhere,” would be, to make law, and not to expound it. To convert the word “otherwise” into the word “otherwhere,” or the word “elsewhere,” would simply be, to furnish a new

idea, and not a mere verbal correction. No one can contend, that a judicial tribunal can do this, and thus legislate. To speak of "companies, in New Jersey, or, in a different manner," or, "by other causes," or, "in in other respects," is not the same as to say, "in New Jersey," or, "in another State;" "elsewhere," or, "otherwhere;" but, such an expression, in such connection, is, without meaning, insensible, and to be wholly disregarded in reading and expounding said act.

If the foregoing reasoning is sound, there is nothing in said act, which, directly or indirectly, expressly and clearly, authorizes and sanctions the proposed lease to "the Pennsylvania Railroad Company," which is a foreign corporation, whose *works* do not form continuous or connected lines, or have any connection or continuity, with the *works* of "the United Companies of New Jersey." The words of a statute are to be taken, in their ordinary and familiar signification, and import; and regard is to be had to their general and proper use, for "*jus et norma loquendi*" are governed by usage. The meaning of words spoken or written ought to be allowed to be, as it has been constantly taken to be: "*loquendum est, ut vulgus.*" Dwar. on Stat., 702, citing 4 Rep. 47; 9 Law Lib. 47. Where the words of a statute are doubtful, general usage may be called in to explain them, for, "*optimus legum interpret est consuetudo.*" Dwar. on Stat. citing 2 Rep. 81. But, though the judges, in interpreting the law, are to explore the intention of the legislature, yet, the construction to be put upon an act must be such as is warranted by, or at least not repugnant to, the words of the act. Where the object of the legislature is

plain and unequivocal, courts ought to adopt such a construction as will best effectuate the intention of the law-giver; but, they must not, in order to give effect to what they may suppose to be the intent of the legislature, put, upon the provisions of a statute, a construction not supported, by the words, though the consequence should be to defeat the words of the act. Dwar. on Stat. 703, citing *Rex vs. Stoke Damerell*, 7 B. & C. 569.

Where the legislature has used words of a plain and definite import, it would be very dangerous to put upon them a construction, which would amount to holding, that the legislature did not mean what it expressed. The fittest course, in all cases, where the intention of the legislature is brought into question, is, to adhere to the words of the statute, construing them, according to their nature and import, in the order in which they stand, in the act. Dwar. on Stat. 703, citing *Rex vs. Ramsgate*, 6 B. & C. 712. It is much the safer course to adhere to the words of the statute construed, in their ordinary import, than to enter into any inquiry, as to the supposed intention of the parties who framed the act. Judges are not to presume the intentions of the legislature, but to collect them from the words of the act, and they have nothing to do with the policy of the law. Judges are not to direct their conduct, "by the crooked cord of discretion, but by the golden-net wand of the law;" that is, not to construe statutes by equity, but to collect the sense of the legislature, by a sound interpretation of its language, according to reason and grammatical correctness. Dwar. on Stat. 702, citing *Rex vs. Inhabitants of Great Bentley*, 10 B. & C. 527. If the words go be-

yond the intention, it rests with the legislature to make an alteration. The duty of the Court is only, to construe and give effect to the provision. The decision of judges may operate to defeat the object of the statute; but, it is better to abide by this consequence, than to put, upon it, a construction not warranted, by the words of the act, in order to give effect to what may be supposed to be the intention of the legislature. It is safer to adopt what the legislature have actually said, than to suppose what it meant to say. Dwar. on Stat. 707, citing *Rex vs. Barham*, 8 B. & C. 104; *Notley vs. Buck*, 8 B. & C. 164; also, 1 Term Rep. 52. A *casus omissus* can, in no case, be supplied by a court of law, for that would be to make law. Judges are bound to take the act as the legislature has made it. Dwar. on Stat. 711, citing 1 Term Rep. 51. A statute shall never have an equitable construction to overthrow an estate. Dwar. on Stat. 720. A power derogatory to private property must be construed strictly, and not enlarged, by intendment. Dwar. on Stat. 750, citing Loft. 438; *Gray vs. Liverpool & Bury Railway*, 4 Railway Cases, 235-240; 1 Redf. on Law of Railways, 3d ed., sec. 64, pl. 5, 6, pp. 234, 235, and cases cited in notes 6, 7, 8, and 9; Id., pp. 236, 237, see also cases cited in notes 15, 16, 17, and 18, on p. 237; *Charles River Bridge vs. Warren Bridge*, 11 Pet. 420; *U. S. vs. Arredondo*, 6 Pet. 691, 738; 1 Zab. 442; 3 Zab. 510; *Cam. & Amboy R. R. vs. Briggs*, 2 Zab. 623. Private acts of Parliament conferring new and extraordinary power, of a special nature, affecting the property of individuals, should receive a strict interpretation. Where particular powers are granted to a company, they must clearly show their authority, and

if the words of the statute, on which they rely, are ambiguous, every presumption is to be made against the company, and in favor of private property. Dwar. on Stat. 750, citing *Rex vs. Croker*, Cowper's R. 26; *Scales vs. Pickering*, 4 Bing. 450; 2 Chitty, 610; 2 Chitty, 658. It is not, or cannot be pretended, that the Act of March 17th, 1870, applies to "the Pennsylvania Railroad Company," or authorizes the proposed lease to them, for the reason that they are "identified in interest," in any way or manner, either as regards *franchises, property, or stock*, with "the United Canal and Railroad Companies of New Jersey." If it should be so pretended, a simple denial is sufficient, until such interest is exhibited to the Court. The proposed lease seeks to institute a quasi identity of interest based on the fact, that no such identity of interest exists antecedent to it. The words "identified in interest," according to lexicographers, signify "ascertained or made to be the same in interest." The word "sameness" is the synonym of the word "identity." We speak of the "identity of persons," or of "personal identity." See Webster's Dict., words "identified" and "identity." "The Pennsylvania Railroad Company" is, confessedly, not named in the said Act of March 17, 1870. The words "company and companies" are used, and are designated, in a very general way, by three particulars of designation, to wit: 1. "A company or companies, in this State" (New Jersey); 2. "A company or companies identified in interest, with the United Canal and Railroad Companies of New Jersey;" 3. "A company or companies, whose *works* form, with the *works* of the United Canal and Railroad Companies of New Jersey" (not "by means of, or, together with, the

works of intervening railroad companies, but directly and immediately"), "connected or continuous lines." Manifestly, no one of these designations or descriptions applies to "the Pennsylvania Railroad Company."

In addition to what has been remarked on this topic, it may be further remarked, that if the *works* of "The Pennsylvania Railroad Company" were separated only by the imaginary State line between New Jersey and Pennsylvania, from the *works* of the United Companies of New Jersey, yet because of said intervention, said works would, in legal contemplation, be as effectually disconnected and separated as though "the wall of China rose between them." "A connection or continuity" between the *works* of railroad corporations can only, with legal propriety, be predicated of such works as have been constructed, under and by virtue of the same right of "eminent domain," a connection between which has been authorized by the legislation of the same State, or by the concurrent legislation of two States. Again, the railroad of "The Pennsylvania Railroad Company" has a different gauge from that of the railroads of "The United Canal and Railroad Companies of New Jersey,"—a difference which may be readily overcome in respect to the transit of cars, but not in respect to the transit of locomotives. How then can the works (meaning railroads) of "The Pennsylvania Railroad Company" be said "to form a *connected* and *continuous* line with the works (meaning railroads) of the 'United Canal and Railroad Companies of New Jersey' "? It is true that it is held, in Pennsylvania, that a connection can, with legal propriety, be recognized between railroads of *different gauges*, in a judicial construction or interpretation of an act of Assembly of

that State. See Philadelphia and Erie R. R. Co. *et al.* vs. Catawissa R. R. Co. *et al.*, 53 Penna. St. R. 20. But such judicial ruling rests upon the peculiar character of Pennsylvania legislation, in respect to connections between artificial highways of that Commonwealth; such legislation authorizing, in numerous instances, *connections* between railroads and canals, between railroads and plank roads, and between railroads and turn-pikes, and other similar connections, for the transportation of persons and merchandise, from one to the other. No like reason for such exceptional judicial ruling exists in New Jersey. The term, "connection of railroads," in Pennsylvania, means connection of trains rather than of rails.

3rd. The said Act of March 17, 1870, does not authorize a grant or *transfer*, by lease or otherwise, of *all* the property and estate, real, personal and mixed, and of *all* the franchises appurtenant thereto, of the United Canal and Railroad Companies of New Jersey, such as is proposed by the said lease, to any other company, domestic or foreign. The language of the act, in this respect, is, "that it shall and may be lawful for the said United Companies, by and with the consent," etc., etc., "to consolidate their respective capital stocks, or to consolidate with any other railroad or canal company or companies, in this State or otherwise, with which they are or may be identified in interest, or whose works shall form with their own continuous or connected lines, or to make such other arrangements *for connection or consolidation of business*, with any such company or companies, by agreement, contract, lease, or otherwise," etc., etc. The agreement which the United Companies made with the Pennsylvania R. R.

Co., February 18, 1863, referred to and exhibited in the answer of the said companies (see pp. 66-86 of said answer), illustrates an arrangement between distinct railroad companies for "connection of business." As said agreement was made without any previous legislative authorization, the draftsman of said act may have intended by said act to supply the requisite authority. One railway company association, allying and connecting itself with another, in regard to traffic, in which they have a common interest, does not amount to an amalgamation between the two companies. An amalgamation implies such a consolidation of the companies as to reduce them to a common interest, 2 Redf. on Law of Railways, sec. 253, pl. 1, p. 659, note 1. *Id.* pp. 660, 661. After consolidation of two or more companies, the United Companies are liable for antecedent debts of the respective consolidating companies, see notes 1, 2, 4, 5, on pp. 659, 660, 661, 662 of same work. *Midland G. W. R., of Ireland vs. Leech*, 28 Eng. L. & Eq. 17; 3 Ho. Lds. 872.

Lexicographers define the phrases, "connection of business" and "consolidation of business," respectively, to be as follows: "Connection of business" signifies "union, by junction of business;" "consolidation of business" signifies "the uniting of several businesses into one." Is such the effect of the proposed lease? The idea of uniting the business of one railroad company with that of another, either by junction or otherwise, so as to constitute one business, necessarily involves the idea of a like union (without merger) of such franchises and powers of the several contracting corporations, as enable them to acquire such business to conduct, manage, or carry on such business, and to

divide, among their respective stockholders, the profits (if any) of such united business. "Consolidation of stock" is an unity of stock and dividends, without corporate merger. "Consolidation of business" is an unity of business and earnings, without corporate merger. See *supra*, reference to Ames & Ang. on Corp. (9th ed.), sec. 272, p. 269; *Farnum vs. Blackstone Canal Corp.*, 1 Sumner, 47. *It is a copartnership.* Does the proposed lease effect any such consequence or result? It effects nothing of that kind, but an entirely incongruous and inconsistent result. It does not constitute any "unity of stock and dividends," or any "union in the prosecution of business and sharing of the profits and losses of business," but simply a relation of landlord and tenant between the proposed lessors and lessee. It wholly transfers or assigns all the stock, namely, all the property, real, personal and mixed, and all the business connected therewith belonging to the lessors named, in said lease, together with all their corporate franchises and powers appropriate, incident, or appurtenant to said property and said business, including the franchise or power, of acquiring, conducting, managing and carrying on said business, and of dividing its net earnings or profits among their respective stockholders, substituting therefor and in lieu thereof, a fixed, but inadequate, bare, and unsecured quasi annual rent, to be paid quarterly, by the lessee, to the lessors, for nine hundred and ninety-nine years, and leaving them out of all their vast and lucrative property, corporate franchises, privileges and powers highly useful and valuable, as they are, to the people of New Jersey, and to their own respective shareholders, only "the shadow of a name." "*Stet nominis umbra.*"

4th. The said act of March 17, 1870, has never been *accepted* by either of the several corporations, sometimes called "The United Canal and Railway Companies," named, in the said act, as the recipients of the proffered grant of additional or supplemental corporate franchises and powers. The said act purports "to enable" the said companies, and to grant to, confer and bestow on them, severally and collectively, the additional and supplemental franchises and powers set forth in said act, which they did not, in whole or in part, previously possess. The said act is, therefore, in legal contemplation, a proffered supplement to the several acts of incorporation of the aforementioned respective companies, is *pro tanto*, a new act of incorporation, *i. e.*, it proffers new and further terms of contract to the said corporations. Said act must, therefore, be clearly, distinctly and formally *accepted*, before it can form any part or portion of the several charters of the aforementioned respective companies, or bind as a new, further and additional contract, either the State, the said several corporations, or their several and respective stockholders. An acceptance of the proposed lease in the manner mentioned in said act, is, in no just sense, an acceptance of said act by the stockholders of either of the corporations, who are named in said act, or in said lease. To validate said act, an *acceptance*, by all the stockholders, in a duly convened corporate meeting of each of the companies, whose respective charters are affected by said act, is absolutely indispensable. In reference to a proper acceptance of said act, the mode adopted, by the Board of Directors of the United Companies of New Jersey, to obtain the assent of the stockholders of the several companies, *impliedly*, to said act,

by the appointment of a committee, “to obtain the consent of the stockholders to said lease” and to effect an execution of said lease, is illegal, inequitable, inappropriate and unconstitutional. The aforementioned action of the said United Board is manifestly a breach of trust by trustees, by means of a combination to effect a surrender, and extinguishment of their trust, in disregard of the good faith and fidelity, which they owe to the people of New Jersey, and to the stockholders and bondholders of the United Companies of New Jersey. Nor does it make any difference, that the State has an interest, as one of the corporators, for it does not, by such participation, identify itself, with the corporation, or change the character of the corporation, from a private into a public corporation. Ang. & Am. on Corp., 9th ed., sec. 32, p. 23. Private corporations,—turnpike and railroad companies, banks, &c.,—are created, by a charter or act of incorporation, from the Government, which is, in the nature of a contract, and, therefore, in order to complete their creation, something more than the mere grant of a charter is required: that is, in order to give to the charter the full force and effect of an executed contract, it must be accepted, as the Government cannot incorporate persons, for their benefit, in consideration of benefits to accrue to the Government or the public, without the consent of such persons. Ang. & Am. on Corp., 9th ed., sec. 81, p. 62. The natural persons, to whom a corporate grant is made, the intended body corporate, must be notified of such grant, must duly meet together, to consult and deliberate, upon it, and must accept it in their associated capacity. Ang. & Am. on Corp., 9th ed., sec. 232, p. 206, foot-note 4; Id., sec. 229, p. 202;

Id., sec. 81, pp. 62, 63. A man may refuse a grant, whether from the Government or an individual. Ib., p. 63; *Short vs. Unangst*, 2 W. & S., 45. The terms offered by the Government may, therefore, be acceded to or refused, by the intended body corporate; and, if not acceded to, they have no binding effect. They can have no binding effect, on the grantor or government granting, unless the grantee or intended body corporate is bound by an acceptance. Ang. & Am. on Corp., 9th ed., sec. 82, p. 63; Id., p. 64. The members of a corporation aggregate cannot, separately and individually, give their consent, in such a manner as to oblige themselves as a collective body; for, in such a case, it is not the body, that acts; being lawfully assembled, they represent but one person, and they may consequently make contracts, and, by their collective consent, oblige themselves thereunto. Ang. & Am. on Corp., pp. 202, 206, (9th ed.,) secs. 229 and 232. Grants beneficial to corporations may be presumed to have been accepted, under certain circumstances, and an express acceptance may not be necessary; but, such presumption must be, according to legal reason and the law of presumption. No such presumption arises, in this case, because, there is no evidence of any formal corporate acceptance of such act, in any way or manner. Ang. & Am. on Corp., 9th ed., sec. 83, p. 65. If a charter is granted to persons, who have not applied for it, the grant is said to be "*in fieri*," until there has been an acceptance expressed. Ib., p. 65. It may, for a time, remain optional, with the persons intended to be incorporated, whether they will take the benefit of the act of incorporation; yet, if they execute the powers and

claim the privileges granted, the duties imposed upon them, by the act, will then attach, from which they cannot discharge themselves. There may be many instances, in which an acceptance of a charter, at least for some purposes, may be inferred, from the exercise of corporate powers, under it. *Ib.*, p. 65. Stockholders may be bound, by an acceptance or any conduct amounting to an acceptance, on the part of the directors of the corporation; but, this rule is founded upon the consideration, that such directors have been invested, by the grant contained, in the original charter, (where a supplement thereto is the subject-matter of acceptance or rejection,) with sufficient power to bind the whole body by their acceptance. *Ib.*, sec. 84, pp. 66, 67. A charter of a private corporation, whether civil or eleemosynary, is an executed contract, between the Government and the corporators, and the legislature cannot repeal, impair, or alter it, against the consent or without the default of the corporation judicially ascertained and declared. Such contract is protected by the tenth section of the first article of the Constitution of the United States, where it is declared, among other things, that "No State shall pass any law impairing the obligation of contracts." *Ang. & Am. on Corp.*, 9th ed., sec. 767, pp. 784-5; *Dartmouth College vs. Woodward*, 4 Wheat. 518. The rule is this: Where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested, under a legitimate exercise of the powers granted. *Ang. & Am. on Corp.*, 9th ed., sec. 767, pp. 788-9; *Morris R. R. Co. vs. Newark*, 2 Stockt. Ch. 352. *Midland G. W. Railway of Ireland vs. Leech*,

3 Ho. Lord's Cases, 871; S. C. 22 Eng. L. & Eq. 45. A subscription for shares in the stock of a joint-stock incorporated company is a contract. Ang. & Am. on Corp., 9th ed., sec. 517, p. 516. It is an executed contract, between the subscriber for such shares of stock, (after he shall have paid such subscription,) and the State granting the act of incorporation, and between the ideal or intellectual body termed a company and corporation, and such shareholder, and also, between such shareholder and the other shareholders of such company, respectively. Ang. & Am. on Corp., 9th ed., sec. 523, p. 521. *Kean vs. Johnson et al.*, 1 Stockt. pp. 401, 407, 419. *Gifford vs. New Jersey R. R. Co. et al.*, 2 Stockt. p. 171.

The terms of such contract are to be found in the act of incorporation; seeing that such contract is respecting or concerning a franchise or public right granted or conferred, in and by such charter or act of incorporation. Ang. & Am. on Corp., 9th ed., secs. 536-7, p. 534. Contract-obligations, interests, vested rights, and rights of property accrue, under such contracts respectively, which neither the State nor the corporation, nor any number of stockholders can impair, divest or take, (save as authorized by the law of said contract contained in the said act of incorporation,) against the will of their owner, unless it be "for a public use," constitutionally ascertained and declared in accordance with the idea of a representative republican system of government, and after payment of an adequate compensation provided by law. Ang. & Am. on Corp., 9th ed., secs. 537-8-9, pp. 534-5-6-7; see Const. of N. J., art. 4th, sec. 7th, clause 9th. *Dartmouth College vs. Woodward*, 4 Wheat. 518; Constitution of

New Jersey, clause 3, sec. 7th, article 4th; Constitution of U. S., clause 1, sec. 10th, art. 1st. The artificial being "intellectual entity," "ideal representation," "legal creature," termed a corporation, is a mere trustee holding a legal title or proprietorship, in the franchise or public rights granted or conferred by the charter or act of incorporation, for the use or benefit of the shareholders or stockholders of said corporation, who are the *cestui que* trusts or beneficiaries, and who are the proper persons to be regarded and protected by a court of equity; seeing that a court of equity affects or acts upon a legal estate, directly or indirectly, solely because of, and for the sake of, the equitable or beneficial title or interest. *Robinson vs. Smith*, 3 Paige's Ch. R., 233; Ang. & Am. on Corp., 9th ed., sec. 312, p. 325, note 4. The right of voting, the manner of voting, the subject-matter of suffrage or voting, and the effect of such vote, are necessarily wholly dependent on, and regulated by, the terms of the charter or act of incorporation. Ang. & Am. on Corp., 9th ed., sec. 115, p. 92; sec. 118, p. 93; sec. 133, p. 103; *Comm. vs. Woelpper*, 3 S. & R., 29, per C. J. Tilghman. A vote of the corporation affecting a contract between it and a member cannot bind the member without his assent to it. Ang. & Am. on Corp., 9th ed., sec. 233, p. 207; *Kean vs. Johnson*, 1 Stockt., pp. 401, 419; *Gifford vs. New Jersey R. R. Co. et al.*, 2 Stockt., 171; *Macon & Western Railway vs. Parker*, 9 Ga. R., 377. In respect to *rights of property* held under the contracts of an act of incorporation or charter, numerical majorities have only such effect or control as is allowed by said charter. Ang. & Am. on Corp., 9th ed., sec. 495, p. 500, note 3 a; sec. 499, pp. 501-2-3;

sec. 500, p. 504, foot-note 2 a. The whole action, as well as existence, of a corporation is legal and artificial. A corporation "lives, breathes, moves, and has its existence," in, under, and by virtue of its act of incorporation or charter. *Ib.*, p. 503, foot-note 4 a. The act of incorporation is an enabling act. It gives the body corporate all the power it possesses. It enables it to contract; and where it prescribes the mode of contracting, that mode must be observed. *Ib.*, sec. 498, p. 501; sec. 291, p. 287.

There is no more legal virtue or sanction in a two-thirds vote, in respect to any legitimate proceedings of a corporate body, in, under, and according to its charter, than there is in a vote of a less but sufficient number: *Provided*, That such vote be in accordance with the requirements and sanction of such charter. *Comth. vs. Lancaster*, 5 Watts, 152; *Ang. & Am. on Corp.*, 9th ed., secs. 497-8-9-500, pp. 501-2-3-4. It is one thing to carry on and manage the business and affairs of a corporation under, by virtue of, in accordance with, and for the purposes of, the charter or act of incorporation, by means of the elective suffrage, and other votes of the members of such corporation, in the manner directed or provided in such charter; and manifestly another and a distinct thing to change or alter the organic or fundamental law of such corporation, to wit, its charter, in a matter materially affecting "the obligations of contracts," "vested rights," and the nature and value of property existing under, by virtue of, or according to, such charter, by means of a supplement to such charter proposed for acceptance by the stockholders of such corporation. *Ang. & Am. on Corp.*, 9th ed., sec. 499, p. 503, note a; *Lauman vs. Lebanon Val. R. R. Co.*,

30 Penn. St. R., 42; *ex parte* Bagshaw, Law Rep., 4 Eq., 341; McCurdy *vs.* Myers, 44 Penn. St. R., 535; State *vs.* Bailey, 16 Ind., 51; North Am'n M. Co. *vs.* Clark, 40 Penn. St. R., 432; Peabody *vs.* Flint, 6 Allen, 52. In the former case, such a vote of the stockholders as is required or authorized by the charter, or by-laws or resolutions adopted by the sanction or in conformity with the charter, whether it be a vote by stock or *per capita*, will properly govern or control, and the minority vote should submit and acquiesce. In the latter case, neither the legal enactment proposed as a supplement to the charter, nor any vote of acceptance by stockholders, required and authorized, by such supplement, will bind or compel a submission or acquiescence, even on a single unwilling stockholder, as respects his vested rights, his contract, and his property existing under and by virtue of such charter. Ang. & Am. on Corp., 9th ed., sec. 772, p. 793; sec. 767, p. 784, p. 785, note 2 a; p. 789, note 1, and cases cited, *supra*. New Orleans, &c., R. R. *vs.* Harris, 27 Miss. R., 517; St. Mary's Church, 7 S. & R. 517; *ex parte* Rogers, 7 Cow. 526; Stevens *vs.* Rut. & Burl. Railway, 29 Vt. R. 545, per Bennett. Ch., cited in 1 Redf. on Law of Railways, 3d ed., sec. 56, p. 194. In this country it seems to be regarded as indispensable, under the restrictions in the Constitution of the U. S., that the consent of *all* the shareholders to the amalgamation of different railroad companies should be obtained. Sec. 2 Redf. on Law of Railways, 3d ed., sec. 252, pl. 2, 3, pp. 657, 658, and cases cited in notes 5, 6, 7, and 8. See also Ware *vs.* Regent's Canal Co., 3 DeG. & J. 212; S. C. 5 Jur. (N. S.) 25. It is an unconstitutional, unphilosophical, and inequitable proposition, that the will of a majority

or of any other superior number of stockholders should bind or control an unwilling stockholder, in respect to his vested rights and private property. Ang. & Am. on Corp., 9th ed., sec. 489, p. 497, note 5. Such submission and acquiescence are not "nominated in the bond." Id. sec. 538, p. 536. See also 1 Stockt. p. 401, and 2 Stockt. p. 171, cited *supra*.

5th. The said act, of March 17th, 1870, does not authorize said lease, because it is an unconstitutional and void act. It is invalid and unconstitutional, because, *First*.—It authorizes (where a single stockholder is unwilling to accept it, in the case of such stockholder), a divestiture of vested rights, "an impairment of the obligations of contracts," and such a change or alteration of private property as is tantamount to "a taking of such private property" "for a private use, and not for a public use." The act itself recognizes the legal fact, that it does have an effect, tantamount to taking, on the property of the stockholders of the United Canal and Railroad Companies of New Jersey, for, among other things, it enacts as follows, viz.: "*Provided*, That, if any stockholder, or stockholders, being such, at the time of making any such consolidation, agreement, contract, lease, or other arrangement, shall be dissatisfied with the same, the said company shall pay to such dissatisfied stockholder or stockholders, the full value of his, her, or their stock immediately prior to such consolidation, agreement, contract, lease, or other arrangement," &c., &c. But, the legislature cannot constitutionally "impair the obligations of a contract," or "take private property," for any private use, or for the gratification of any public policy, which is not also distinctly a "public use" of the people of New Jersey.

See Const. U. S., sec. 10, art. 1; Const. N. J., sec. 16th, art. 1st; also, clause 9, sec. 7th, art. 4th; *Bonaparte vs. Cam. & Amboy R. R. Co.*, Bald., 205; *Baring vs. Erdman*, 14 Haz. Penna. Reg., 129; *Van Horne's Lessee vs. Dorrance*, 2 Dall. 312. The essential franchise of a private corporation is recognized by the best authorities as private property, and cannot be taken without compensation, even for public use. *Thorpe vs. Rut. & Burl. Railway*, 27 Vt. R., 140; *Armington vs. Barnet*, 15 Vt. R. 746; *West River Bridge Co. vs. Dix*, 16 Vt. R. 476; *S. C. in error in Sup. Ct. U. S.*, 6 How. 507; 1 *Bennett's Shelford*, 441, and cases cited in 2 *Redf. on Law of Railways*, 3d ed., sec. 231, pl. 2, pp. 406, 407; *Id.*, sec. 233, pl. 3, 4, p. 483, n. 24 and 25.

Where, under a power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights, which have become vested (under a legitimate exercise of the powers granted) for a private use, or unless compensation is first made, in the case of “a taking for a public use.” *Gelpeck vs. Dubuque*, 1 Wall, 175; *Havermeyer vs. Iowa Co.*, 3 Wall, 294; *Thompson vs. Lee Co.*, 3 Wall, 327; *Balt. vs. Connelville & South Pa. R. R. Co.*, 13 Am. L. R., 750, and 13 *Pitt's L. J.*, 576. The English saying, that “Parliament can do anything, but make a man a woman, or a woman a man,” is not applicable to the constitutional legislature of the republics of the American Union. *Ang. & Am. on Corp.*, 9th ed., sec. 767, pp. 783-4-5-6-7-8-9. The absolute inviolability and sanctity of private property, recognized, both by divine and human law, as is exemplified in the case of the vineyard of Naboth, in Holy Writ, and of the Prussian's mill (which to this day

disfigures the regal pleasure grounds of Frederick the Great of Prussia, at Sans Souci), in profane history are also acknowledged in the enabling clause of the Constitution of New Jersey, which authorizes the legislature, "to take private property for public use on making just compensation therefor." *Levering vs. Phila., Ger. & Nor. R. R. Co.*, 8 W. & S., 459; 1 Kings, chap. 21, verses 1-25. Carlyle's *Life of Frederick the Great of Prussia*, vol. 6th, p. 629. In *Barnard vs. Wallis*, 2 Railway Cases, the Master of the Rolls declares that, aside from the provisions of the Act of Parliament, the owner of one rod of land may insist upon his own terms, to the overthrow of the most important work. "The price of his consent must be determined by himself." See also *Wells vs. Som. & Ken. Railway Co.*, 47. Me. R. 345; see 1 Redf. on Law of Railways, sec. 64, pl. 1, p. 233, note 1; *Ld. C. J. Denman*, in *Queen vs. Eastern Counties Railway*, 2 Railway Cases, 736, 754, said, "It is reasonable and just that any injury to property, which can be shown to arise from the prosecution of railway works, should be fairly compensated for to the party sustaining it." See also *Glover vs. North Staffordshire Railway*, 5 Eng. L. & Eq. 335. The cases in this country which appear to conflict with the just and reasonable principle that a railway corporation is liable for consequential damages to lands, no part of which is taken, on the ground of private nuisance, are cases mainly where such consequential injury has been inflicted by a railway or other internal improvement corporation, under a legislative authorization *regulating some public right*, and not proceeding under or by virtue of the power of eminent domain. See 1 Redf. on Law of Railways, 3d ed., p. 232, pl. 8, 9, 10 and 11. A

railway company is liable for injury or damage which is the immediate consequence of their action. See *Tinsman vs. Belv. Dela. R. Co.*, 2 Dutcher, 148; 1 Redf. on Law of Railways, 3d ed., pp. 295, 296. In what just sense, it may confidently be asked of any judicial tribunal in the land, can a lease of the works of "the United Companies of New Jersey" (which permeate seventeen of the twenty-one counties of New Jersey, and may be said, in view of the network of canals and railroads embraced in them, to constitute nearly the entire internal improvement system of the State of New Jersey, and to be an essential department of the administration of the government of New Jersey by means of its corporate creatures or agents, "the United Canal and Railroad Companies of New Jersey" and their auxiliary companies) to the Pennsylvania Railroad Company be regarded as "a public use of the State of New Jersey," to gratify which, private property may be taken against the will of its proprietor? If such transfer of the property of the respective shareholders, in their stock without their consent, to a foreign corporation, *a railroad jurisdiction* (for such is the management of New Jersey works of internal improvement, by a Pennsylvania corporation having no legal place or standing whatever in the State of New Jersey as an artificial person capable of holding real or personal estate, much less of managing the internal improvements of that State) for a term of nine hundred and ninety-nine years, and converting such property and the business connected therewith, into a mere foreign "chose in action," (cognizable only in the courts of a foreign State probably,) or, a claim, to a quasi semi-annual rent, wholly dependent, for its value, or security,

on the covenant of such foreign corporation in no way amenable to the legal or equitable jurisdiction of the courts of New Jersey, be not, in any just sense, "a public use of the State of New Jersey," the statute authorizing or sanctioning such conversion and taking of private property, is, manifestly, in disregard and violation of the Constitution of the State of New Jersey. *Morris R. Co. vs. Newark*, 2 Stock. Ch. 352; *Regina vs. South Wales R. W.*, 14 Q. B. 902.

The power of eminent domain is a power granted or conferred by the people of a republican State, in and by the constitution, organic law, or charter of a corporation termed a State, to such State or corporation. Analogically speaking, it is a power to appoint public uses, and it may be, in connection with franchises, bestowed by charter on private corporations. When such appointment of public uses is made, the uses arising under such appointment, (being rights of public highway, public easements, or other interests,) are executed by the statute of uses in such appointee, as a Trustee. They are primary uses fed by the freehold estate in the land taken, each and every freeholder of a republican State covenanting (by being a party to the constitution of the State) to stand seized, for the purposes of the power of eminent domain granted and conferred by the constitution of the State, and, consequently reddendo singula singulis, for the purposes of each and every public use arising under an exercise of said power of eminent domain, by the State, or its particular appointee, whether a natural or an artificial person. The interest or title given, by such an execution, by the statute of uses, of such primary public uses in a railroad corporation, is a freehold in an incorporeal hereditament, or right of public way lying in

grant and not in livery of seizin. It is a freehold possessed by a corporation, a special appointee of the State, created by the State, with suitable franchises or special privileges, for the purpose of gratifying, during its existence, public uses of the people of the State. Such trust is not alienable, save by the *consent of all parties* to it, and *to a party competent to take and exercise it*. Is not the proposed transfer, by lease to a foreign corporation, of "public uses" of the State of New Jersey, entrusted to the fidelity, skill, and responsibility of domestic corporations, (a majority of whose directors must be, by the terms of their charters, citizens of New Jersey, and whose corporate residence and principal office must be on the soil of New Jersey,) a misuse, abuse, and disuse of a public trust, and not a transfer, for the gratification of any public uses of the people of New Jersey? The charter of a private corporation is an executed contract between the State and the incorporators, which the legislature cannot constitutionally impair, alter, or repeal, against the consent of any member of the corporation, or without the default of the corporation judicially ascertained and declared, except, "for a public use" ascertained and declared by law, in the particular case, and, on "just compensation being first paid." *Dartmouth Coll. vs. Woodward*, 4 Wheat. 518 and cases cited, in foot-note 2, of p. 785, of *Ang. & Am. on Corp.* (9th ed.). See also, *Com'th vs. Essex Co.*, 13 Gray, 239, 253; *Delaware R. R. Co. vs. Tharp*, 5 Harr. Del. R. 454. A public policy is not "a public use," such as is mentioned, in the constitution, as a warrant, for a legislative interference, with private property. An ascertainment and declaration of a public policy, either by a general or

special statute, is not the ascertainment and declaration of a public use required, by the Constitution. See *Paluïret's case relating to irredeemable ground rents* unanimously decided, by Supreme Court of Penna., opinion, by Mr. Justice Sharswood, Philada. Leg. Intell., June 2d, 1871; 1 Redf. on Law of Railways, 3d ed. p. 230, sec. 63, pl. 2, n. 3, and cases cited, viz., *Williams vs. N. Y. Cent. Railway*, 18 Barb. 222-226, and other cases. A railroad and a canal are respectively "artificial highways of the State." *Perrine vs. Chesapeake Canal Co.*, 9 How. 172; *Camden R. R. Co. vs. Briggs*, 2 N. J. 623. A highway of the State is a public use, in respect to which each and every citizen has a franchise, for its appropriate usufruct. Private property taken, by a private corporation, for the purpose of constructing and completing such a highway of the State is consequently taken, for "a public use." When such "public use" is once gratified, its office of sanctioning and justifying a taking of private property is performed; it is *functus officio*, except, for the purpose of carrying on the business based on it, or connected with it, *as appurtenant to the same purpose or use*.

The several corporations collectively termed "the United Canal and Railroad Companies of New Jersey," had granted to them and bestowed on them, in and by their respective acts of incorporation, public franchises, privileges, and powers enabling and authorizing them, to construct and complete their respective canals and railroads, and, for such purpose (being "a public use,") "to take private property." They have constructed and completed such works respectively, and are now trustees, for the people of the State of New Jersey, of the said "public uses," which are *appurte-*

nant to their respective corporate franchises, privileges, and powers. A lease or transfer of the property, real, personal, and mixed, connected with such "public uses, and of concomitant franchises, privileges, and powers, *is necessarily an essential alteration or modification of the legal title vested in the said respective corporations, and of the public trusts connected with said legal title.* Said corporations have also respectively the legal title, in the corporate franchises, privileges, and powers required and granted, for the purpose of enabling them "to charge fare, freight and tolls, for the transportation of persons and property," on their several canals and railroads, in the State of New Jersey, and, "to divide the net profits of such business, amongst their respective stockholders, in the ratio of stock held by them," and to pay the taxes and imposts reserved to the State of New Jersey. In respect to such legal title, the said corporations are respectively trustees, for their respective shareholders, who are their *cestui que* trusts and beneficiaries. Such *cestui que* trusts and beneficiaries, to wit, the shareholders or stockholders, in the said several canal and railroad companies, in consideration of the money invested by them, under the respective acts of incorporation of the said companies, have rights of property, in such several corporations, of more or less pecuniary value, of which they cannot be deprived, save, for "a public use," and, "after just compensation."

A sale, assignment, lease, or other transfer of such right of property to another corporation, or to a natural person, without more, is manifestly "a taking of private property," for a merely private use. Such sale, lease, or other transfer is not, "for a public use," unless it is,

to satisfy some "public use" other than the public use of which the lessors, are public trustees, and which has been already fully gratified and fulfilled, by the taking of private property, under an appointment to the said lessors, by the legislature. If such sale, lease, or transfer is not, for "a public use," it must necessarily be for a private use, and cannot therefore be constitutionally authorized, against the will of the shareholders, by any statute, that can be enacted. Government cannot take the property of one citizen, for the mere purpose of transferring it to another, even for a full compensation, where the public is not interested in such transfer; and such an arbitrary exercise of power is an infringement of the spirit of the Constitution, not being within the powers delegated, by the people, to the legislature. *Pittsburgh vs. Scott*, 1 Barr. 309; *Lamberton vs. Hogan*, 2 Barr. 24. *Accord*, *Beckman vs. Saratoga & Schenectady Railway Co.*, 3 Paige, 45, cited in *Redf. Am. Railway Cases*, 220-2; *Varick vs. Smith & Atty. Genl.*, 5 Paige, 137. The legislature may exercise the power of eminent domain by and through agents of the State, or through the agency of a corporation or joint-stock company. *Bloodgood vs. Mohawk & Hudson R. Co.*, 18 Wend. 9, quoted in *Redf. Am. Railway Cases*, 225. A railway company cannot, by supplemental legislation, be authorized, by the legislature, to invest its profits, in the purchase of the shares of another company, against the will or dissent of any of its shareholders. *Salomons vs. Laing*, 12 Beav. 339, 377, cited in *Ang. & Am. on Corp.* 9th ed., sec. 392.

Corporate powers render the use of joint stock by the body corporate more profitable, but they form no

part of the joint stock itself, and one decisive test is this, that such powers belong to the corporation inalienably, whereas, the joint stock is capable of being sold, exchanged, varied, or disposed of, at the pleasure of the several shareholders. The corporate property was money, the subscription of individual corporators, and, in order to make it profitable, it was entrusted to a corporation, who have a power of converting a part of it into land, and part of it into goods, and of changing and disposing of each, from time to time, for the objects and purposes of the corporation expressed in its charter. The purpose of all this is the obtaining of a clear surplus profit, from the use and disposal of the capital, for the individual contributors. Ang. & Am. on Corp., 9th ed., sec. 557, pp. 554-5. The property of every member of a turnpike company is a right to receive a proportionate part of the toll, which is considered as personal estate. *Ib.* p. 555, foot-note 1. The corporation, if invested with the legal title, has the property in trust for the individual stockholders. *Ib.* p. 557. If the legislature of a State, in and by an act of incorporation, or, by any statutory enactment prior to such act of incorporation, reserve to themselves the power, to alter, modify, or repeal the charter granted at their pleasure, as the power of modification and repeal is thus made a qualifying part of the grant of franchises, the exercise of that power cannot, of course, impair the object of the grant. *Ib.* sec. 767, pp. 787-8.

The rule to be extracted from the cases is this: That where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested, under a legitimate exercise

of the powers granted, for the gratification of any private use. *Comth. vs. Essex Co.*, 13 Gray, 239, 253, cited in *Ang. & Am. on Corp.*, note 1, sec. 767, p. 789. Corporate franchises are inviolable, save when taken under the right of eminent domain by the legislature. *City of Louisville vs. The University*, 15 B. Monroe, 642; *Bangor, Oldtown, and Milford Railway vs. Smith*, 47 Me. R., 34; *Sage vs. Dillard*, 15 B. Monroe, 340; *Charles River Bridge vs. Warren Bridge*, 11 Pet., 420. See also 1 Redf. on Law of Railways, sec. 70, pl. 7, 8, 9, 10, 11, pp. 257-8-9, and notes on said pages. The sole object and purpose of the act of March 17th, 1870, having any bearing on the lease in question, as expressed by it, is to authorize "arrangements, for connection or consolidation of business," between "the United Companies and the companies referred to in general terms in said act," "by agreement, contract, lease, or otherwise." Surely, such "connection or consolidation of business" is not "a public use." The business of a corporation, from which it derives its profits or net earnings distributable, in dividends, is certainly as much a private use as is the use of the dividends when received. There is no feature of "a public use" about "a connection or consolidation of the several business" of two corporations.

The act of March 17th, 1870, is unconstitutional and void, because: *Second.*—The only provision made in said act for compensating the dissatisfied stockholders for the taking of their stock, is that "its value shall be assessed, as of the time immediately before the taking, but that the assessment thereof shall not be made and compensation paid until *after* the taking." The Constitution of New Jersey expressly requires, that com-

pensation shall be *first* made. See Const. N. J., art. 4, sec. 7, clause 9. The Constitution of New Jersey does not "keep the word of promise to the ear and break it to the hope," in this respect. The mischievous consequences (of substituting a mere legal provision for ultimate payment, *after* private property has been taken, appropriated, and used, perhaps for years, by a railroad company in place of "prior just payment"), such as satisfying the spoliated owner, with a worthless judgment against an insolvent corporation, are thus avoided. Such mischievous consequences are exemplified in the case of *Levering vs. Phila., Germantown, and Norristown R. R. Co.*, 8 W. & S., 459; see also, on the point, *Balt. & Susq. Railway vs. Nesbit*, 10 How., 395; *Compton vs. Susquehanna Railway*, 3 Bland, 386, 391; *Van Wickle vs. Railway*, 2 Green, 162; *Bath River Nav. Co. vs. Willis*, 2 Railway Cases, 7; *Cozens vs. Bogner Railway*, 12 Jur. (N. S.), 738; 1 Redf. on Law of Railways, 3d ed., sec. 65, pl. 3, 6, pp. 240, 241. See also *Central Railway Co. of N. J. vs. Hetfield*, 5 Dutcher, 206, 571; *Walker vs. Ware, etc., Railway*, Law Rep., 1 Eq., 195, cited in Redf. on Law of Railways, sec. 65, pl. 6, n. 10, p. 239 (4th ed.); *Stacey vs. Vermont Central Railway*, 27 Vt., 39, cited in Redf. Am. Railway Cases, p. 246.

The said act of March 17th, 1870, is unconstitutional and void, because: *Third.*—In requiring the dissatisfied stockholders to give up their shares of stock, and equitable corporate franchises and rights belonging to them, as *cestui que* trusts or beneficiaries of said corporations (to wit, among others, the right "of electing directors to manage the business of said railroads and canals, and the right to participate in a di-

vision of the net earnings or profits of said business, in the ratio of the stock held by each of them, as evidenced by certificates for said shares of stock"), in order to enable said corporations to carry into execution any agreement, contract, lease, or other arrangement which they may deem it expedient to make with any of the other companies mentioned in the first section of said act, the act delegates, or attempts to delegate, to said United Companies, the right to decide (in their own case) what constitutes "a public use" sufficient to justify "the taking of private property;" which right can only be exercised by the legislature itself. "*Delegata potestas non potest delegari.*" The right of "eminent domain," of taking private property "for public use," belongs to the people of New Jersey by the theory of republican government, and that right is delegated by the people of New Jersey, in and by their Constitution, or organic law, to the legislative department of government constituted thereby, who exercise a public trust coupled with an interest or power. The Constitution of New Jersey constitutes a representative republican government, in each department thereof. When private property is to be taken for "public use," it is taken by the authority of the legislature of New Jersey, and, therefore, with the consent of the representatives of the owner; but it cannot be taken by the legislature save "for a public use." It logically follows that such "public use" must be directly ascertained, decided on, and declared in and by the same legislative expression or act which authorizes the concomitant taking. The consent to such taking, by the representative body, the legislature, must be (according to the Constitution) based

on the previous all-important prerequisite of "a public use," ascertained, decided on, and declared by the same representative body, to wit, the legislature, which alone can authorize "the taking of private property." The legislature, in the view of legal reason, cannot shift to, or devolve on, anybody not constitutionally representing the owner of the private property which is to be taken, the duty and responsibility of authorizing the taking of said property, any more than they can shift to or devolve on such extraneous body, not known to the Constitution as a representative body, the duty and responsibility of determining accurately and deciding on the existence of the "public use" for which such property may be constitutionally taken by their own exclusive authorization. See *Parker vs. Commonwealth*, 6 Penna. State Rep., p. 507. See, also, opinion of C. J. Booth in a similar case in the State of Delaware, referred to in *Parker vs. Commonwealth*. "It rests in the wisdom of the legislature to determine whether the benefit to the public will be of sufficient importance to render it expedient for them to exercise the right of eminent domain, and to authorize an interference with the private rights of individuals for that purpose." (Ch. Walworth, in *Beekman vs. Sar. & Schen. R. Co.*, 3 Paige, cited in *Redf. Am. Railway Cases*, p. 222.) See, also, *Lance's Appeal*, 55 Penna. St. R., p. 16; *Memphis Freight Co. vs. Memphis*, 4 Cold., 519. The legislature have no power to take the property of a citizen for any but a public use. This is a power essentially different from that of taxation, in regard to which there is no constitutional restriction, and no guaranty for its just exercise, except in the discretion of the legislature. See 1 *Redf. on Law of*

Railways, 3d ed., sec. 63, p. 230, pl. 2, and cases, such as *Bradley vs. N. Y. & N. H. Railw.*, 21 Connt. R., 294, and others; cases, also, such as *The People vs. Mayor of Brooklyn*, 4 Comst., 419, and others, cited in note 2.

The legislature must decide in the first instance when the right of eminent domain may be exercised; but this is subject to the revision of the courts, so far as the uses to which the property is applied are concerned. 2 Kent's Com., 340; *Varick vs. Smith*, 5 Paige, 137; *Armington vs. Barnet*, 15 Vt. R., 745; *Donnaher vs. The State*, 8 Sm. & M., 649. The regulation of a public right, such as the use of navigable waters, is not a taking of private property for a public use. See 1 Redf. on Law of Railways, 3d ed., p. 232, sec. 63, pl. 8, 9, 10 and 11, and cases cited in notes 6, 7, 8, 9 and 10. The taking, for a public use, of private property, is in its nature a judicial, and not a ministerial act, and therefore the propriety of such taking cannot be passed upon by a delegation of it to any other than a judicial tribunal or a tribunal invested with judicial qualifications. *Crocker vs. Crane*, 21 Wend., 217-221, cited in Redf. Am. Railway Cases, 39. A railroad corporation holds an appointment under the power of eminent domain, for the purpose of gratifying and managing important public uses and trusts, whose proper discharge and fulfillment involve much discretion. Therefore, the office or duty of such corporation is not merely ministerial, but savors often of judicial discretion. Such office or duty of judicial discretion can, with legal or constitutional propriety, be confided only to a citizen or a domestic corporation. Delegated jurisdiction is that which is communicated, by a judge, to some other person, who acts in his name, and is called

a deputy, whose jurisdiction is held to be that of the judge, and not of the deputy; and, in this case, the maxim, "*Delegatus non potest delegare*," holds. The person, to whom any official duty is delegated, cannot lawfully devolve the duty on another, unless he is expressly authorized so to do. Broom's Legal Maxims, p. 385 of treatise; p. 243 of vol. 50 of Law Library and cases cited, in note n of said page.

The said act, of March 17th, 1870, is unconstitutional and void, because, *Fourth*.—The said canal and feeder and the said railroads of the said United Companies, with their necessary and proper appendages and appurtenances, respectively, are "public highways," within the State of New Jersey, and it is not competent, for the Legislature of New Jersey, directly or indirectly, to assign or transfer, or to authorize an assignment or transfer of the highways, or the control of the highways of New Jersey, to a *foreign* corporation. Referring to what has hereinbefore been said, in support of the proposition, that a canal or railroad is "an artificial highway of the State," an artery, through which the life-blood of the body politic circulates, and, of the further proposition, that the government of New Jersey is a representative republican form of government constituted by the people of New Jersey, and regarding these propositions as not needing any further elucidation, it will follow, from their admission, (in connection with the facts, that the management of the canals and railroads constructed and completed, by the United Companies, severally or collectively, has been entrusted and confided, by the legislature, to directors elected, by the respective stockholders of said companies, *a majority of whom must be citizens of New Jersey*,

who must transact the business of said corporations on the soil of New Jersey, and that the franchises enabling such care and management are "sovereign prerogatives of the State" granted and confided to said corporations and the managers thereof, as public agents employed, in managing a very large portion of the internal improvement system of the State of New Jersey; for, the construction and maintenance of "public highways" has always been and must continue to be a branch of public administration committed either to natural persons or to public or private corporations created, by the State, for such purpose,) that, (consistently with said propositions and facts,) the legislature of New Jersey cannot constitutionally authorize a *transfer*, by lease or otherwise, of such public duties, with their concomitant franchises, to a *foreign* corporation (deriving its franchises or sovereign prerogatives, of a public character, exclusively, from a *foreign* State,) in no way or manner, amenable to the laws or process of the State of New Jersey, and not in sympathy with her interests or institutions. The State of New Jersey is a *primary* civil or public corporation (of a sovereign character) created by the people of New Jersey. Its charter is its organic law or constitution. Its corporators are the citizens of New Jersey, each of whom possesses a civil franchise or freedom under said organic law. The power of eminent domain is a prerogative franchise held in trust by the State for its corporators or citizens. When it is exercised, it must be for the uses of such corporators or citizens, strictly speaking.

It would be, on legal principles, just as congruous, consistent and constitutional, to entrust the management and control of all the public highways of New

Jersey, by a legislative grant, to the officials of some European, Asiatic, African or other foreign government (who have charge of its public highways), as to sanction a transfer of their proper duties and concomitant powers by "The United Canal and Railroad Companies of New Jersey," to "The Pennsylvania Railroad Company," which is confessedly *a purely foreign* corporation. The entire project embodied in the proposed lease, is in utter disregard of obvious principles of elementary reason, fitness and good faith. In order to effect it the United Companies of New Jersey must disregard their contract with the State of New Jersey to construct and conduct, for the uses and in the interest of the people of New Jersey, a communication by railway and canal, wholly on the soil of New Jersey, between Jersey City and South Amboy respectively, and the city of Camden (forming, in that way, together with the use of waters, partly within and partly contiguous to the State of New Jersey, a communication between the cities of New York and Philadelphia), and surrender to a foreign corporation the patriotic trust confided to them respectively by the State of New Jersey. In order to effect the said lease the Pennsylvania Railroad Company must break their faith with the State of Pennsylvania and the city of Philadelphia, which is now plighted to make that city their eastern terminus and objective seaboard point, and violating natural and geographical proprieties, must convert themselves into a Pennsylvania railroad corporation, whose railroad runs *through Pennsylvania* to the city of New York to enrich and enlarge it, on the ruins of the metropolis of Pennsylvania—Philadelphia, against which city a discriminative policy must of necessity be

observed. To effect the execution of said lease the directors of the leasing corporations must abandon to a foreign corporation forever the honorable and responsible trusts, obligations and duties of an eminently public nature, voluntarily accepted and assumed by them when chosen by their fellow-stockholders to their important official stations, and cruelly disappoint every sanguine expectation based on a large confidence in their integrity, ability and fidelity, entertained by shareholders and bondholders of their respective companies, and by the people of New Jersey.

If such reasoning be sound, on principles of natural and constitutional law respectively, it follows, that the legislature of New Jersey cannot, consistently with those principles, authorize an assignment, of the trust and official duty, of the maintenance and management of an artificial highway of the State of New Jersey, delegated to a domestic corporation, to a foreign corporation owing exclusive fidelity, allegiance, and accountability to a foreign State, and controlled by the citizens of such foreign State. See *Hill vs. Beach*, 1 Beas. 31; *Middle Bridge Corp. vs. Marks*, 26 Me. 326; *Farnum vs. Blackstone Canal Co.*, 1 Sumner, 47; *Maryland vs. Northern R. R. Co.*, 18 Md. 193; *Regina vs. Arnaud*, 9 Q. B. 806; *Ang. & Am. on Corp.*, sec. 377, pp. 398, 399, 400, 401; *Ib.*, sec. 407, pp. 429, 430, 431, 432; *Louisville R. R. Co. vs. Letson*, 2 How. 558; *Ang. & Am. on Corp.*, 9th ed., sec. 108, 109, p. 84; *Blackstone Mfg. Co. vs. Blackstone*, 18 Gray, 488. The case of *Morris Canal & Banking Co. vs. Townsend*, 24 Barb. 658, is not in conflict. It was held in that case, that it was competent to the legislature to confer a prerogative franchise upon a foreign corporation; that is, to natu-

ralize it, so as to enable it to take land, for the purpose of constructing a public improvement, in the State. It is not necessary, however, to endorse the reasoning in that case. It may be latitudinarian. There was also, in that case, a *special* franchise derived, from the eminent domain of the State of New York,—a prerogative franchise conferred on the Morris Canal and Banking Co. *by name* (an adoption), to take certain private property, for what the legislature determined and designated to be a *public use of the State of New York*, to wit, the construction of a reservoir to feed a contiguous canal of New Jersey convenient to the use of the people, of New York, and, of that locality, and specially benefiting the region, where the reservoir was to be constructed. The case, of Palairot's ground rent, heretofore cited, which is a decision by a higher tribunal,—the Supreme Court of Pennsylvania,—is not in accord with the reasoning of the Court in Morris Canal and Banking Co. *vs.* Townsend: it decides, that a Public Expediency or Policy is a distinct thing from a Public Use warranting the exercise of the Power of Eminent Domain.

III. The lessee named in the said proposed lease, "the Pennsylvania Railroad Company," possesses no power or franchise to become lessee in the said lease. The Pennsylvania Railroad Company is a railroad company incorporated by the Commonwealth of Pennsylvania, whose respective western and eastern termini are the cities of Pittsburg and Philadelphia. It is the vendee of much of the former canal and railroad property of the Commonwealth of Pennsylvania, and has a connection at Mantua, in the Twenty-fourth Ward of the city of Philadelphia, with the railway of the company known as "the Connecting Railroad Company,"

of Pennsylvania, by means of which such portions of trade and travel, as seek the city of New York, by way of the railroad of "the Pennsylvania Railroad Company," finds transit, to and over the lines of "the Philadelphia and Trenton Railroad Company," of "the Trenton Delaware Bridge Company," of "the Camden and Amboy Railroad and Transportation Company," and of "the New Jersey Railroad and Transportation Company," to Jersey City, and thence, across the Hudson River to New York (the aforementioned railroads other than that of "the Pennsylvania Railroad Company," being of the same gauge, and, of a gauge different, from that of "the Pennsylvania Railroad Company)."

It is a legal presumption, until the contrary is shown, that "the Pennsylvania Railroad Company" possesses no power or franchise to become the lessee of all the canals, railroads, franchises, and *other property*, real, personal and mixed, of the lessors (corporations of the State of New Jersey), as mentioned in the said lease, for the reason, that the said "Pennsylvania Railroad Company" is a foreign corporation having its exclusive residence and field of corporate action on the soil of Pennsylvania, and possessed of a corporate life and existence derived solely from the Commonwealth of Pennsylvania, which, as respects the present question of corporate franchises and property, is as foreign to the sovereignty of New Jersey, as that of any distinct and independent government in Christendom. The Pennsylvania Railroad Company is, (legally speaking,) an artificial person, *inhabitant and citizen* of the Commonwealth of Pennsylvania. A migration of a railway corporation into another State, by a transfer of its business office and a performance

of its corporate functions there, even with the legislative permission of that State, is an infraction of its contract with the subscribers to its stock, and discharges them from calls. *Aspinwall vs. Ohio & Miss. R. R. Co.*, 20 Ind. R., 492 ; 1 Redf. on Law of Railways (4th ed.), 202.

Two railroad corporations of the Commonwealth of Pennsylvania, namely, the Pennsylvania Railroad Company, and the Philadelphia and Trenton Railroad Company, (the latter as one of the lessors and the former as lessee,) are parties named in the proposed lease of all the canals, railroads, works, and other property, real, personal and mixed, of the United Canal and Railroad Companies of New Jersey and of the Philadelphia and Trenton Railroad Company, to the Pennsylvania Railroad Company. The statute law of Pennsylvania can only affect its own corporations. The charter of the Pennsylvania Railroad Company, or of the Philadelphia and Trenton Railroad Company, does not confer a franchise or power to become a lessee in said lease. The hereinafter mentioned acts of Assembly of the Commonwealth of Pennsylvania, (which are the only statutes of the Commonwealth of Pennsylvania relevant, in any way or manner, to the said lease, as will be admitted,) do not legally and constitutionally supply such defect or omission of corporate power and franchise, as will hereafter appear. An act of Assembly, of the Commonwealth of Pennsylvania, entitled, "A supplement to an act in reference to running of locomotive engines and cars on connecting railroads, approved 30th March, 1847," approved March 29th, 1859, (Pamph. Laws of Penna., 1859, p. 290,) "authorizing companies owning any connecting railroads in the State of Pennsylvania, to enter into any

lease and contracts with each other in respect to the use, management, and working of their several railroads," does not authorize the proposed lease, and is not applicable, because said act of Assembly has never been accepted by the stockholders of the aforementioned Pennsylvania Railroad Company, or of the Philadelphia and Trenton Railroad Company, because "the Philadelphia and Trenton Railroad Company" does not own any railroad connecting with the railroad of "the Pennsylvania Railroad Company," (the lessee named in the proposed lease,) but merely has a leasehold interest in "the Connecting Railway," which intervenes between the railroad of the Philadelphia and Trenton Railroad Company and the railroad of said Pennsylvania Railroad Company; and because the proposed lease is not merely a lease or contract, in respect to "the use, management and working" of the railroad of "the Philadelphia and Trenton Railroad Company," but is a lease and transfer of all the bonds, stocks in other companies, real estate, (not appurtenant to or connected in any way with "the use, management, and working," of the railroad of said company,) and other property, real, personal and mixed, belonging to the Philadelphia and Trenton Railroad Company.

An act of Assembly of the Commonwealth of Pennsylvania, entitled, "An act relating to certain corporations," approved, April 23d, 1861, (Pamph. Laws Penna., 1861, p. 410,) among other things, provides: "That it shall be lawful for any railroad companies, to enter into contracts, for the use or lease of any other railroad, upon such terms as may be agreed upon, with the company or companies owning the same, and to run, use, and operate such road or roads, in

accordance with such contract or lease ; provided, that the roads of the companies so contracting or leasing shall be directly, or by means of intervening railroads, connected with each other." This act merely remedies one of the defects, in the afore-referred-to act of March 29th, 1859, which have been designated, viz.: the said act, of March 29th, 1859, only authorizes leases, between railroad corporations, who are owners of connecting railroads. This act, of April 23d, 1861, authorizes leases, between railroad corporations, who own railroads, which are connected, by intervening railroads, and, therefore, obviates so much of the objection, which has been stated, to the act of March 29th, 1859. The act of April 23d, 1861, is, however, not applicable to the proposed lease, because said act has not been accepted, by the aforementioned Pennsylvania Railroad Company, or Philadelphia and Trenton Railroad Company, and because, it authorizes merely contracts, for "the use or lease of railroads and, to run, use and operate such railroads." It does not authorize the proposed lease, for 999 years, of not only the railroad of the Philadelphia and Trenton Railroad Company, but also of its leasehold interest, for 999 years, in "the Connecting Railroad" (which it does not "own"), and of all its property, real, personal, and mixed, including bonds of other companies, stock in other companies, and a large amount of very valuable real estate wholly disconnected from, and not, in any sense, appurtenant to, "the running, using, and operating the railroad," of the said Philadelphia and Trenton Railroad Company. An Act of Assembly of the Commonwealth of Pennsylvania, entitled, "An act to authorize railroad companies to lease or become lessees, and to make contracts with

other railroad companies," approved February 17, 1870 (Pamph. Laws Penna., 1870, p. 31), provides, among other things, "that it shall and may be lawful, for any railroad company or companies created by or existing, under the laws of the Commonwealth, from time to time, to lease or become the lessees, by assignment or otherwise, of any railroad or railroads, or enter into any other contract, with any other railroad company or companies, individuals or corporations, on such terms and conditions, as may be agreed upon, whether the road or roads embraced, in such lease, assignment, or contract, may be within the limits of this State, or created or existing under the laws of any other State or States," etc., etc.; "*Provided, however, That such road or roads embraced, in any such lease, assignment, or contract, shall be connected either directly, or by means of intervening lines, with the railroad or railroads of said company or companies of this Commonwealth so entering into such lease, assignment, or contract, and thus forming a continuous route or routes for the transportation of persons and property.*" This act merely extends the provisions of former and afore-referred-to Acts of Assembly, so as to authorize leases and contracts with foreign railroad corporations. The said act, of February 17, 1870, does not remove the objections made to prior legislation, on the subject, and applicable likewise to it, viz., that it has never been accepted by "the Pennsylvania Railroad Company," or by the Philadelphia and Trenton Railroad Company, and thus made part of its charter, and that it authorizes only leases and contracts "respecting the railroads of railway companies," and not respecting other property disconnected from and not appurtenant to such railroads.

The Act of Assembly of the Commonwealth of Pennsylvania, entitled "An act relating to leases or contracts for the use of canals and other navigation works, by railroad companies," approved May 3, 1871 (Pamph. Gen. Laws of Sess. of Penna. Leg. of 1871, p. 70), provides, among other things, "that the authority conferred, upon railroad companies, by the act approved on the seventeenth day of February, A. D. 1870, entitled 'An act to authorize railroad companies to lease or become lessees, and to make contracts with other railroad companies, corporations, and parties,' shall extend to and embrace leases, assignments of leases or other contracts relating to canal and other navigation works, situated either in this or any other State." This last-mentioned Act of Assembly merely extends the act, of 17th February, 1870, hereinbefore mentioned, to leases, etc., relating to canal and other navigation works, domestic and foreign, and is open to the same objections, which have been stated, against the Act of Assembly, which it extends. It may be further remarked, that the proposed lease not being authorized by the charters of the above-mentioned Pennsylvania Railroad Company, and of the Philadelphia and Trenton Railroad Company, respectively, or, by the aforementioned Acts of Assembly, severally or collectively, is a violation of the organic compact or contract contained in said charter, between the Commonwealth of Pennsylvania and "the Pennsylvania Railroad Company," and the Philadelphia and Trenton Railroad Company, respectively, and between said corporations and their respective stockholders, "impairs the obligations of a contract," alters, changes and essentially modifies vested rights and takes private

property acquired under said charters if any stockholder of said companies respectively does not assent to the execution of said lease. Compensation should have been provided in case of any such dissent. Such compensation is not even alluded to in any one of the aforementioned acts of Assembly, and on this ground they are clearly unconstitutional, and may be questioned by any party in interest. If the State of New Jersey can enable or authorize the Pennsylvania Railroad Company to become lessee in said lease (thereby impairing the obligation of contracts between that corporation and its stockholders), her legislature should provide compensation for them. See *Aspinwall vs. Ohio & Miss. R. R. Co.*, 20 Ind. R. 492. What right or power has the legislature of New Jersey to exercise her eminent domain in respect to vested rights in Pennsylvania, in order not to impair the obligation of a contract possessed in the State of Pennsylvania? Such a contract is, under the Constitution of the United States, protected, and in this respect, the Act of March 17th, 1870, if applied to the Pennsylvania Railroad Company, is clearly in violation of the Constitution of the United States and therefore void. The assent of the stockholders of said Pennsylvania companies respectively is not to be presumed. It must be averred and shown, as a matter of title. The aforementioned acts of Assembly of Pennsylvania are general statutes, which in no way sanction said lease by any direct or indirect designation or particular mention of the parties thereto. It may be well questioned whether such general legislation,—where private property is divested or taken from an unwilling owner,—is a compliance with the constitutional requirement that

private property shall only be taken, with the consent of the representative of its owner, for public use. It is a logical necessity that such public use should be ascertained and declared in each particular case. The Supreme Court of Pennsylvania has, in a recent case, unanimously decided that a public policy or expediency declared, by a general statute, is not the public use mentioned in the Constitution of Pennsylvania. Furthermore, the proposed lease cannot be sustained, on the ground that it is made for "a public use." Such lease is about to be made manifestly for the private use of a private corporation,—the Pennsylvania Railroad Company,—and where it affects a contract contained in the charter of either of the aforesaid companies, or impairs the vested rights of dissenting stockholders of either of said companies, it is clearly unconstitutional.

The complainants in this bill are deeply interested in the existence of a valid title in the Pennsylvania Railroad Company to become lessees of the franchises, works and improvements of the respective companies in which they are shareholders, and therefore have a right to question in this proceeding the effect of legislation in Pennsylvania bearing on said title. But, admitting (in the face of the aforementioned legal presumption, and of the adverse legal facts shown by the foregoing brief examination of the acts of Assembly of the Commonwealth of Pennsylvania supposed to bear on the present question), that the Commonwealth of Pennsylvania has granted to and conferred on "The Pennsylvania Railroad Company" a franchise and power to become the lessee of all the canals and railroads and other property, real, personal and mixed, of the so-called United Canal and Railroad Companies

of New Jersey, of what avail is such grant and bestowal of franchise, within the State of New Jersey, upon the soil of New Jersey, to affect "the eminent domain" of the State of New Jersey, or the judgment of the Chancellor of the State of New Jersey, in respect to an alleged corporate capacity of the Pennsylvania Railroad Company to become lessee in the aforementioned proposed lease? Does "the comity of nations" extend so far as to permit a foreign sovereignty to clothe one of its corporate creatures, its "inhabitants," or "artificial citizens," with a franchise or power (independently of any concurrent legislation in New Jersey, in respect to such corporation, and by mere force of its own sovereignty) to acquire by agreement, contract, lease, or otherwise, a right "to manage, control and operate the canals, railroads or other public highways of the State of New Jersey," to perform the duties of a public agency or office, in the State of New Jersey, to exercise most important franchises of a public nature (relating to and employed in and about the public administration of the State of New Jersey), granted to and conferred by the State of New Jersey on one of its own corporations for such public purpose, and to hold, in fee simple or for a lesser estate, vast and valuable amounts of real, personal and mixed estate belonging to a corporation of the State of New Jersey?

No such exaggerated "comity of nations" exists or controls the present question of the capacity of the Pennsylvania Railroad Company to become the lessee in the said lease. On no settled principle of "the comity of nations" can the "Pennsylvania Railroad Company" become such lessee. It may be admitted that corporate greed and ambition have solicited

such mischievous and aggrandizing recognition, under color and pretense of "the comity of nations," from judicial tribunals, step by step, and in a stealthy manner; but the doctrines of the law of reason, of nature, of nations, or of common, civil and municipal law, have not been disregarded and violated, in response to such corporate solicitation, by the learned, pure, able and independent judiciary of this country, and never will be while virtue and intelligence continue to be the principles of republican government. What is "the comity of nations" applicable to a recognition of foreign corporate existence, and what are its natural and proper limitations? A corporation can have no legal existence out of the sovereignty by which it is created, as it exists only by force of law and in contemplation of law, and when that law ceases to operate and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. It must owe its exclusive fidelity and allegiance to its creating State. Redf. on Law of Railways, 3d ed., sec. 17 a, pl. 4, pp. 57, 58; *Miller vs. Ewer*, 27 Me. R., 509; *Hilles vs. Parrish*, 1 McCarter, 380; *Ohio & Miss. R. R. Co. vs. Wheeler*, 1 Black, 286; *Louisville R. R. Co. vs. Letson*, 2 How., 497; *Liverpool Ins. Co. vs. Mass.*, 10 Wall., 566; *Ins. Co. vs. Francis*, 11 Wall., 210. But, although a corporation may live and have its being in its creating State only, it does not follow that its existence there will not be recognized in other places; and its residence and *quasi* citizenship in one State create no insuperable objection to its power of contracting in another *where such contracts are not contrary to the policy of the State, injurious to its interests, or*

do not usurp its " eminent domain," sovereignty or franchise. If a foreign corporation has no corporate property of its own, save a leasehold interest (which on account of its burdens, such as a *quasi* rent and other liabilities assumed by the lessee, may be valueless) in the State of New Jersey, sends no officer, upon whom by the law of New Jersey process is to be served, to reside in the State and transact business there on account of the corporation, and therefore cannot be effectually reached by any judicial process of New Jersey (see *Ang. & Am. on Corp.*, 9th ed., sec. 403, 404, pp. 425-6-7-8, note 1), such hindrances to her citizens would certainly be against the policy of New Jersey, and injurious to her interests. The corporation must show, that the law of its creation gives it authority to make such contracts as those it seeks to enforce; yet, as in the case of a natural person, it is not necessary that it should actually exist in the sovereignty in which the contract is made. It is sufficient that its existence as an artificial person in the State of its creation is acknowledged and recognized by the State or nation where the dealing takes place, and that it is permitted by the laws of that place to exercise powers with which it is endowed. *Ang. & Am. on Corp.*, 9th ed., sec. 161, p. 128, and cases cited, in foot-note 3 a; *Ib.*, sec. 273, pp. 261, 266; *Bank of Augusta vs. Earle*, 13 Pet., 521. It is not, however, entitled to the immunities and privileges accorded by the Constitution of the United States in sec. 2d of art. 4th to State natural citizenship. *Paul vs. Virginia*, 8 Wallace, 168. A steamboat company incorporated in one State may take a lease of an office as a place of business in another State. *Steamboat Comp. vs. McCutcheon*, 13 Penna. St. R., 133. Every

power which a corporation exercises in another State depends for its validity upon the laws of the sovereignty in which it is exercised, and a corporation can make no valid contract without the sanction, express or implied, of such sovereignty, unless a case should be presented in which a right claimed by the corporation should appear to be secured by the Constitution of the United States. *Steamboat Comp. vs. McCutcheon*, 13 Penna. St. R., 133, cited in *Ang. & Am. on Corp.*, 9th ed., sec. 162, p. 129. Accordingly, where a coal company incorporated by the State of New York for the purpose of supplying the city of New York and its vicinity with coal, purchased coal lands in Pennsylvania, the recitals in the act of incorporation, which gave the power to purchase lands, showing that this power was granted with special reference to the purchase of lands in the State of Pennsylvania, it was held by the Supreme Court of the United States that the right to hold the lands so purchased depended upon the assent, express or implied, of the State of Pennsylvania, and the Supreme Court of Pennsylvania having decided that a corporation of that State or of any other State has, without special license, a right to purchase, hold, and convey land, until some act is done by the Government, according to its own laws, to vest the estate in itself, it was held that the lands purchased should remain in the corporation purchasing them, until divested by a proceeding instituted by the Commonwealth of Pennsylvania for that purpose, and forfeited to its own use. *Ang. & Am. on Corp.*, 9th ed., sec. 162, p. 129, note 2, citing *Runyan vs. Coster*, 14 Pet., 122. The case in Pennsylvania referred to by the Supreme Court of the United States in *Runyan vs. Coster*, 14 Pet., 122, is the

case of *Leazure vs. Hillegas*, 7 Ser. and R., 313. That case was decided on the ground that the English statutes of mortmain, in force in Pennsylvania, only make void conveyances to corporations for superstitious uses, and voidable, at the suit or instance of the Commonwealth, all other conveyances to corporations. The Supreme Court of Pennsylvania, therefore, refused, in an action of ejectment, by and between private citizens having no pecuniary interest in the franchise usurped, to avoid a conveyance of land in Pennsylvania to a foreign corporation, or to enter into the question of the usurpation of a franchise of the Commonwealth, as ground of avoidance of such conveyance. That decision, which is the basis of the ruling by the Supreme Court of the United States in *Runyan vs. Coster*, has such "extent, no more." Where, however, such a voidable conveyance, by lease or otherwise, of land, of interests savoring of the realty, or of public franchises, to a foreign corporation, directly or indirectly affects vested rights, directly or indirectly "impairs the obligation of contracts," sequesters or "takes private property," or transfers public franchises granted to private corporations, in any way or manner, seeing that such conveyances are wholly unauthorized by law, and, are an usurpation of "the eminent domain," the sovereignty and franchises of the State, the immediate private parties affected, by such conveyance, such as stockholders of a corporation, which has made or is about to make such a conveyance, hold such a legal position in relation to such conveyance, as to entitle them to raise the question of its validity. *Vt. & Can. R. R. Co. vs. Vt. Cent. R. R. Co.*, 34 Vt., p. 2, cited in note (a) to sec. 275, p. 267, of *Ang. & Am. on Corp.*, 9th ed.

It is obvious, that the real estate of a corporation can be dealt with only, by the judicial authority of the State in which it lies; and this holds, even though the corporation is created by the concurrent acts of several governments. Ang. & Am. on Corp., 9th ed., sec. 163, p. 129; Binney's Case, 2 Bland's Ch., 142. Nor is the applicability of this general principle affected by the fact, that the charter directs that the real property of the corporation shall be considered as personal estate. Such a clause is merely a declaration that, by the municipal regulations of the State, where it lies, such property shall be treated as personal and not as real estate, but, by no means, varies the international rule, that real estate, as part of the habitation of the nation, is to be governed by the local law. Ang. & Am. on Corp., 9th ed., sec. 163, p. 130. So, too, it has been held that it is for the courts of the State, where the land lies, to construe the charter of a corporation and to determine whether the corporation is authorized thereby to take or hold such real estate, and that an adjudication, upon the question of its corporate capacity, by a court of the State creating, can have no further effect or authority than the reasoning upon which it may have been founded gives it. Ang. & Am. on Corp., 9th ed., sec. 163, p. 130; *Boyce vs. City of St. Louis*, 19 Barb. 650. Where two corporations are created by adjacent States, of the same name, for the purpose of constructing a canal extending through a portion of both States, the interests of which are united, by subsequent acts of the States, as the legislation of neither State can authorize an act, such as the raising of a dam, in the other, each act of incorporation must be construed as limited, in its operation, to the

territorial limits of the State granting it. Ang. & Am. on Corp., 9th ed., sec. 164, p. 130; Farnam *vs.* Blackstone Canal Co., 1 Sumn. 46; Bissell *vs.* Mich. R. R. Co., 22 N. Y. Rep., 258. In Bissell *vs.* Mich. R. R. Co., 22 N. Y. Rep. 258, C. J. Comstock said: "The entire course of business in which the defendants were engaged could not be justified by their charters. Each of them was chartered to build a railroad, the termini of which were specified. They built the roads and then consolidated their business. It is difficult to affirm that the charter of either authorized its capital to be thus blended with that of the other. It is equally difficult to hold that they had any rightful authority to construct or lease another road in continuation of the line. If those acts were an abuse of power, the shareholders had ample opportunity to prevent or arrest the abuse; so also had the State sovereignties, who may be wronged by the course of dealing pursued." In the same case, in the Court of Error and Appeals, of New York, it was held by Selden, J., that a contract made by a corporation acting *ultra vires* was void, because against the policy of a State, which is opposed to an assumption of its sovereign franchises or prerogatives, and that such contract was not merely voidable. See opinion of Selden, J., on pp. 441, 442, of Redf. Am. Railway Cases (ed. 1870).

Where a foreign corporation, or any one claiming under it, avers, that it is authorized, by its charter, to take or convey lands, the burden is on it to show that, by its charter, it is a body politic authorized to take or convey lands. Lumbard *vs.* Aldrich, 8 N. H. Rep. 34. There is no legal difficulty in the way of the creation of a single corporation by the concurrent action of two

or more States, nor of the creation of a new corporation, out of two or more corporations already existing, nor of the creation by one State of such a corporation, where one of the constituent corporations is a foreign one. *Bishop vs. Brainerd*, 28 Conn., 289; *Phila. & Wilm. R. R. Co. vs. Maryland*, 10 How., 376. Where a corporation is inaugurated by two States, it has been said that the joint act of incorporation is not only a contract with the company, but a compact between the States that are parties to it. The charter is not to be compared with a charter from an individual State; it is to be liberally construed with reference to the magnitude of the enterprise, by giving the company the necessary means to accomplish the purposes of its creation. Like a treaty it is the law of the contracting States, without being subject to interpretation by the local usages of either; the same construction of it must be made in both. *Brockett vs. Ohio R. R. Co.*, 14 Penna. St. R., 244; *Cleveland R. R. Co. vs. Speer*, 56 Penna. St. R., 332. A corporation incorporated by one State, does not violate its charter by obtaining a charter from another State. *Commth. vs. Pittsburg R. R. Co.*, 58 Penna. St. R., 26. A permission accorded to a foreign corporation of a friendly State, to avail itself of the law of remedy in transitory actions, in the courts of a commonwealth or nation, is not usually contrary to the policy, or injurious to the interests of a civilized people, but is calculated to promote commerce and useful intercourse between independent communities. Such comity is in the interest of commerce and civilization. "*Quod genus hoc hominum ? * * * hospitio prohibemur arenæ.*" *Silverlake Bank vs. North*, 4 Johns. Ch. R., 370; 2 Kent's Comm. ed. of 1827, sec. 33, p. 229.

Hospitality is not, however, an admission to *citizenship*. A guest of a people is not one of its officials, public servants, rulers or citizens. The comity of nations is part of the unwritten constitution or organic law of what may be likened to a vast corporation aggregate, a community of nations or of distinct, independent and sovereign peoples, who, for certain very limited purposes of commerce, civilization and intercourse, recognize each other and the claims and obligations of human brotherhood. But, this is a recognition of a very general character, mainly, "*pro beneficio commercii*" and, for kindly intercourse, and is dependent on special treaties, contracts or conventions, which, together with principles of natural reason, constitute what is termed the law of nations. This comity is necessarily wholly subordinate to the domestic policy, interests, independence and local government of a particular people or State corporation. A privilege to contract, in relation to matters not affecting "the eminent domain," public franchises, or administration of the government, of an independent sovereignty, such as matters relating to trade and commerce, personal property, and chattels, real, accorded to a foreign corporation, cannot usually be adverse to the policy, or injurious to the interests of such sovereignty. If a contract made, between two corporations, is not, in violation of some public law, or contrary to the public policy, only the immediate parties to it, as the corporations themselves, or the stockholders, hold such a legal position in relation to the contract, as to entitle them to raise the question of its validity, on account of the alleged want of power in the parties to make it. *Vt. and Can. R. R. Co. vs. Vt. Cent. R. R. Co.*, 34 Vt., 2, cited in

Ang. and Am. on Corp., 9th ed., foot-note a, p. 267, sec. 275. But, on the other hand, an exercise of a franchise or power appertaining to "the right of eminent domain," of a sovereign State, and concerning its territory, public franchises, or government, by a foreign corporation, upon the same principle of natural reason, is usually contrary to the policy of a distinct and independent sovereignty, calculated to injuriously affect the interests of a distinct and independent people, and should be regarded, by judicial tribunals, as unauthorized by law, and not to be recognized. 1 McCord's S. C. Rep. 80. Angell & Ames on Corp. (9th ed.), sec. 104, pp. 80-1, foot-notes 1, 3; Middle Bridge Corp. vs. Marks, 26 Me. 326; Hill vs. Beach, 1st Beas. 31; Maryland vs. Northern R. R. Co., 18 Md. 193; Ang. & Am. on Corp., sec. 108, p. 84; Regina vs. Arnaud, 9 Q. B. 806; Paul vs. Virginia, 8 Wallace, 168; Ang. & Am. on Corp., 9th ed. sec. 377, pp. 398, 399, 400, 401; Society for the Propagation of the Gospel vs. Wheeler, 2 Gallison, 105. No prerogative right, such as a lease of the franchises of a railroad company, can be acquired by a foreign corporation, except by express legislative sanction, under a constitutional exercise of the right of eminent domain by the legislature. Ohio & Miss. R. R. Co. vs. Indianapolis and Cincinnati R. R. Co., 5 Am. Law Reg. (N. S.), 733, 744; State vs. B. C. & M. & M. Railway, 25 Vt. R. 433. In this case C. J. Redfield says: "The right to build and run a railroad and take tolls and fares is a franchise of a *prerogative* character, which no person can legally exercise without some special grant of the legislature, and we shall not be expected to allow a foreign railroad to usurp the exercise of any franchises of that character." It is true, that the same C. J. Redfield

held, in *Sturges et al. vs. Knapp et al.*, and the Troy and Boston R. R. Co., 31 Vt. R. 1, "that the complainants could not object to a want of authority on the part of the defendants, a foreign corporation of the State of New York, to take as lessees." But, although we do not concede, that the decision of the Chief Justice, in that case, is in full accord with his previous ruling in the afore-mentioned case, in 25 Vt. R. 433; yet perhaps a seeming conflict or discrepancy may be reconciled on the ground, that, in the latter case, the corporate capacity of the foreign corporation to take by lease prerogative franchises, was questioned by private purchasers, under a mortgage foreclosure of the franchises of a railroad, and not by corporators of a corporation holding prerogative franchises. They were in, by act of law, and not under the original prerogative franchises of the corporation mortgagor. Their trustees held as natural persons under a mortgage foreclosure. The complaining bondholders had no legal or corporate organization. Their trustees under the mortgage held for them the legal title acquired by proceedings under the mortgage, which did not pass corporate franchises of either an ordinary or a prerogative character to the said trustees. The main point of the case was the good faith and beneficial character of the lease made by the trustees to the foreign corporation; they being authorized by the statutes of Vermont to make such lease. The Court decided in favor of the equity of the lease. The trustees did not, nor perhaps could they, question the power of the lessee to take, because said lease was an executed contract between said trustees and said lessee. The complainants, as *cestui que trusts*, were therefore estopped. See also the subsequent case of Vt.

& *Canada R. Co. vs. Vt. Cent. R. Co.*, 34 Vt. R. 2, where it was held that, although the corporation or its stockholders can question the incapacity of a contracting corporation, yet, a bondholder, under a mortgage recognizing the capacity of such contracting corporation, was estopped from making such question.

From the foregoing reasoning, the adjudged cases cited, and the legal distinctions taken, it conclusively appears, that even if the "Pennsylvania Railroad Company" (in discharge of the legal burden assigned to it, of showing to the court, that the franchises claimed by it are clearly conferred on it, in and by the acts of incorporation granted to it by the Commonwealth of Pennsylvania) is able to show such corporate capacity or power appertaining to it as a corporation of the Commonwealth of Pennsylvania, its claim to be recognized as entitled to exercise such franchises or powers in the State of New Jersey, and, in reference to said proposed lease, in accordance with an assumed "comity of nations" (in the face of a denial of the validity of such corporate power and franchises, by the complainants in this bill in equity), cannot be legally admitted. It cannot be successfully contended that, on any settled principle of "the comity of nations," or consistently with the indispensable "eminent domain" and domestic sovereignty of New Jersey, the Pennsylvania Railroad Company can legally become the lessee, in the said lease. That corporation is an "artificial person," "inhabitant," and "citizen" of the Commonwealth of Pennsylvania exclusively, and therefore wholly disqualified and incapacitated (even on the most latitudinarian construction of the doctrine of national comity) as an alien, from holding any franchise of the State of

New Jersey relating to an administration of her public highways, or of any of her public trusts or official agencies, which are constitutionally, and by the law of nature and of reason, proper and peculiar to her own citizens and corporations—and this, because such assumption of and intrusion upon a public franchise of the State of New Jersey would be "contrary to the policy of the State, injurious to its interests, and an usurpation of its 'eminent domain,' and of State sovereignty."

It is said that the execution of the proposed lease, by permission of this court, is "*a business necessity.*" Why? Necessity is the usual plea of *tyranny*: it is so in this case of attempted *railroad centralization*. A proper subject of remark, in this connection, because it is the animus of the aggression, which the complainants are repelling, is *Railroad Centralization*. The complainants are *citizens* of New Jersey, as well as shareholders of the companies, and, in such twofold character, seek the protection of this court. In this twofold character, they plead likewise, in behalf of the highest interests of their fellow-corporators residing in New Jersey, who, in numbers, if not in shares of stock, constitute a personal majority of the corporators of said companies. They speak also, in behalf of the just obligations of corporations (who are, by law, *as yet*, controlled, by boards of directors, a majority of whom must be citizens of New Jersey), to their creating State—the State of New Jersey.

As counsel for such complainants as have been just described, namely, shareholders, who are *citizens* of New Jersey, we claim that a strong and just regard *for the political and economical welfare of New Jersey, of*

the United States, and of mankind, as well as for the rights of private property, prompts and animates the resistance now offered by the complainants to this attempted aggression of "*Railroad Centralization.*" The Pennsylvania Railroad Company has already so centralized other State railroads, as to be extended far beyond its natural proportions as a railroad company of the State of Pennsylvania. It is said to now dominate fifteen or more formerly distinct local or State railroad organizations, and to have at this time in its attendant train, more than seven thousand miles of American railways. Like a baleful comet, it streams through the political sky with an enormous tail spanning the entire continent. Corporations had their rise in the laws of Solon, in ancient Greece, and in the laws of the Twelve Tables of Numa Pompilius, in ancient Rome. They soon became the subject of jealousy to the rulers of Rome. Although they were originally introduced for municipal purposes, and served to peacefully separate for a time the hostile elements of Sabine and Roman nationality, their franchises of *immortality* and of *artificial individuality*, were soon employed in the service of private avarice and political ambition. They became the subjects of much political anxiety and disquietude to the Roman emperors Augustus Cæsar and Trajan respectively, who, at periods of their respective reigns, discountenanced and dissolved them. Certain corporations, such as those of the Templars, in the reign of Edward I., and of the religious institutions in the reign of Henry VIII., in English history, were so formidable to those English monarchs respectively, that they were suppressed. The British East India Company gave great trouble to

English statesmen at a later period. A political contest between the people of the United States and the Bank of the United States, terminating in its overthrow, yet well remembered by a living generation, agitated the United States to its centre much more than the ordinary shock of political parties. The political power of a railroad corporation created by a State lies in its possession, by means of its franchises, of part of the sovereign prerogatives of the people of the State conferred by them primarily on the State as a corporation, in trust for themselves and by the State granted to such railroad corporation. A railroad corporation possesses among such franchises *immortality*, *artificial individuality* and *personal irresponsibility* as respects its individual corporators. Personal irresponsibility was not a feature of the corporations instituted according to the civil law. In the case of a railroad corporation, there is in this country, usually, a delegation of great and permanent political power, without any accompanying personal responsibility, either physical or moral. A railroad corporation "has no body to be kicked and no soul to be damned." Such a corporate power is necessarily dangerous in a republic. Its employment is, to some extent, excused by its convenience and expediency. On such grounds an objection cannot be made to the creation of a railroad corporation, when it is properly restricted, controlled and regulated by the legislative power of the State. It is a wise precaution in the administration of a republican government, to keep political power near the people, and ever to accompany its delegation with immediate personal responsibility. This maxim is ordinarily greatly disregarded in the creation of a railroad corporation.

If it is said that the act of March 17th, 1870, provides "that no such lease (as it authorizes) shall have the effect, or be construed to release or discharge, either the lessors or the lessee therein, from any taxes, liabilities, obligations, or duties, which they, or either of them, may be subject to, either to the State of New Jersey, or to any other person or persons" (see act), it is replied, namely, that the interest or right of the State to assume the franchises and works of the United Companies in 1889, is a shifting use, and not in any sense a tax, liability, obligation, or duty to which the companies, or either of them, are liable. A shifting, sometimes called a secondary use, is an use to arise hereafter, in lieu of another use, limited in the meantime. Sec. 2, Cruise, Dig. Tit. 16 c, 5 s. 26, cited in Cornish on Uses, 3 vol., Law Lib., p. 91, note c. The respective charters of said United Companies *appoint* to them respectively, under an exercise by the legislature of the power of eminent domain (which power is fed and sustained by the freehold of each and every owner of the soil of New Jersey, and is given or granted by the people of New Jersey to the corporation created or chartered by them, namely, to the State of New Jersey, in and by the great organic charter, the Constitution of New Jersey, to be exercised by means of the legislative, judicial, and executive departments of the government of said State of New Jersey), the primary use or the use of the franchises and works now limited to and enjoyed by the said United Companies respectively. The same *appointment or exercise of the power of eminent domain* contained in the aforementioned charters, respectively, limits to the State of New Jersey the aforementioned contingent, secondary, or shifting use,

in 1889. The statute of uses executes said uses, as they respectively arise. Such uses are not uses of corporeal hereditaments, but mainly of incorporeal hereditaments, such as public franchises (part of the franchise or power of eminent domain), and a right of public highways. Such incorporeal hereditaments lie in grant, not in livery of seisin; consequently, there can be no private entry on them for condition or covenants broken. Hence, one of the legal reasons for terming the contingent right or interest of the State in such franchises and rights of public highway, a shifting or secondary use, in 1889. Future uses, when the person who is to take, is certain, are devisable, or assignable, in equity. Wilson on Springing Uses, c. 4, sec. 19th, p. of treatise, 157, of Law Lib. ed., vol. 11, p. 58. *A later act, by the donee of a power, inconsistent with former uses limited, where the power is not "functus officio," is a revocation.* Powell on Powers (ed. of 1791), pp. 112, 114, and 116; 4 Kent's Com., 291; Bac. abridg. Tit. Uses and Trusts, K. Co. Lit., 327, a, note; Worth on Wills, 491; 2 Bouvier's Institutes, n. 1890; 2 Bouvier's Law Dict., Tit. Shifting Use; 2 Cruise Dig. Tit., c. 5, s. 26, cited in Cornish on Uses, 3 Law Lib., p. 91, note c. If the State of New Jersey has authorized a lease for 999 years, by the United Companies, of the use now limited to them until 1889, *she has estopped herself, by revocation,* from the usufruct of said shifting use in 1889, and appointed the use now limited to the said companies contingently, until 1889, to the lessee, for the longer period of 999 years; the State of New Jersey continuing to be the donee of said power of eminent domain, and, therefore, of a power of revoking a shifting use, in its own favor, created under and by virtue of said

power. A power derived from the doctrine of uses may be defined to be an authority enabling a person, through the medium of the statute of uses, to dispose of an interest vested in himself or in another person. Bouvier's Law Dic., Tit. Power, Vol. 2d, p. 361; 1 Sugden on Powers, pp. 1, 9, 12, 35, 36, 37, 38, 39, 40, 41, 42. Powers collateral are those which are given to mere strangers, who have no interest in the lands. Particular powers are those which are to be exercised in favor of specific objects. Bouvier's Law Dict., Tit. Powers, Vol. 2, p. 362; 1 Sugden on Powers, p. 45; 4 Kent's Com. 311. The power of eminent domain is therefore (analogically speaking), a power collateral and particular; the use or uses raised by the exercise of which are fed or sustained, by the fee simple estate resident in the respective proprietors of the soil of New Jersey, and are executed by the statute of uses. Where the deed appointing an use (in the exercise of a power), expresses or limits no *estate*, the appointee will take an estate for life only, Co. Litt. 42, a; 1 Sugden on Powers, 556. The use now limited to the United Companies respectively, namely, the usufruct of their railroads and canal, is therefore for the corporate lives of said companies respectively, unless shifted to the State of New Jersey in 1889, by their paying for the same at actual cost. The power of eminent domain, which has limited all the aforementioned public uses, is fed and sustained (analogically speaking), by the absolute fee simple of the proprietors of the soil of New Jersey. They have severally, by the grant of said power of eminent domain, to the State of New Jersey, in and by the Constitution of the State, covenanted to stand seized to the future uses limited, or appointed, by the

said State, in a constitutional manner. The fee simple of the soil affected by this power of eminent domain, and by the public use, which it limits or appoints, remains in the covenantors (the people of New Jersey), and the uses are fed out of their individual seisin, as they arise. Sugden on Powers, Vol. 1, pp. 35, 41 and 42. The operation of any instrument, such as a deed, will, a simple note in writing, or even a nuncupative will, made under a power to appoint uses, being simply to declare the uses, to serve which a sufficient legal estate is already legally created, such power of eminent domain vested in the State is properly and sufficiently exercised in and by a legislative act, such as the several charters of the United Companies of New Jersey. 1 Sugden on Powers, pp. 260, 261; *Gibbons vs. Moulton*, Finch, 346.

IV. The said lease, or any such lease, is a violation of the laws and Constitution of New Jersey. Before proceeding to establish this proposition, it is premised that such establishment is intended to have application to any similar indenture of lease, in case the Court shall be of the opinion that the particular draft of an indenture of lease referred to in the bill can now be employed. The draft of an indenture of lease referred to and set forth in the bill filed in this proceeding contains, among other things, the following stipulation, in the *habendum et tenendum* clause thereof, namely: "to have and to hold the same, unto the said lessee, for and during the full end and term of nine hundred and ninety-nine years, yielding and paying therefor, unto the said lessors, yearly, and every year, during the said term, the yearly rent or sum of \$1,948,500 lawful money of the United States (the said rent being

equal to ten dollars per share per annum upon the present aggregate outstanding capital stock of the said companies, lessors, to wit, 194,850 shares, which said aggregate number of shares does not include 7,650 shares of the Philadelphia and Trenton Railroad Company, owned by the Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company), in equal quarter-yearly payments, on the first day of the months of July, October, January, and April, in each and every year, during the said term, the first and second quarterly payments to be made together, on the first day of July, A. D. 1871, free and clear of and from all taxes, charges, and assessment whatsoever, now existing or hereafter to be imposed by lawful authority upon the said corporations, lessors, their respective franchises and property, including all income tax of the United States, which said rent, when converted into dividends by the corporations, lessors, upon all shares of their respective companies [excepting and excluding, nevertheless, the said 7,650 shares of the Philadelphia and Trenton Railroad Company, owned by the Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company], shall be paid, at some convenient place in the said city of Philadelphia to be designated, from time to time, by the lessee, and to such depository of the lessors, in the city of New York, as may, from time to time, be designated by them or any of them.

Therefore, the amount of *quasi* rent reserved, in said draft of an indenture of lease, and to be paid, on the first day of July, 1871, free and clear, etc., to the respective stockholders of the corporations, which are named as lessors, in said lease, by "the Pennsylvania Railroad

Company," the lessee therein named, amounted to the large sum of \$974,250. The payment of this large sum of money, it must be conceded, forms an important part of the consideration mentioned, in said form of indenture, and must be regarded as a not inconsiderable portion of an inducement to its execution. The form of indenture of lease approved of, by the board of directors of the United Companies, on the 19th of May, 1871, and submitted, by them, to the respective stockholders of the several corporations represented by them respectively, for the consent thereto of the said stockholders, and, which, in case two-thirds in interest of said stockholders should consent thereto, they, on the same day, directed should be executed, under the corporate seal of the said several companies, as charged, in the bill of complaint, is the same aforementioned draft or form of lease. On the first day of July, 1871, confessedly, the aforementioned prerequisite consent had not been obtained, the aforementioned draft of an indenture of lease had not been executed, and it remains, until this day, still unexecuted. The aforementioned first day of July has passed without any payment of the aforesaid sum of \$974,250, as stipulated and provided in said draft of an indenture of lease, and without any lawful tender of the same, in performance of the aforementioned stipulation and provision. The payment of said sum of \$974,250, in performance of said stipulation and provision, is now and forever simply impossible! Therefore, whatever may have been any alleged prerequisite consent of stockholders obtained prior to July 1, 1871, or since, to an execution of said draft of an indenture of lease in the terms in which it was submitted to them, the said consent is

now worthless, and is as though it had never been given. The said draft of an indenture of lease thus approved of, submitted and consented to (if, indeed, any fair, just, and legal consent has ever been obtained from the aforementioned alleged prerequisite number of stockholders, which is denied by the complainants in this bill), is incapable of the contemplated execution, no longer exists, and has passed away forever, so far as any assent to it obtained from the aforesaid stockholders, at any time prior to July 1, 1871, is involved.

Evidence of consent to said draft of an indenture of lease by stockholders obtained since July 1, 1871, is inadmissible, because it then became and now is useless and invalid. The said draft of an indenture of lease, as an instrument *in fieri*, necessarily expired, by its own failure of consideration, and by its own consequent limitation, on July 2, 1871, and can never be revived in the same terms. A new draft of an indenture of lease omitting the aforementioned impracticable terms and portion of consideration, but, possessed of the same essential features, will probably be prepared for execution by the said defendants. The bill of the complainants charges, among other things, "that the majority of the board of directors of the United Companies, defendants in said bill, acting by and through the committee of six directors constituted and *constructed* by the resolutions of May 19, 1871, set forth in said bill, intend to persevere in their efforts to obtain the consent of two-thirds of the said stockholders of the United Companies to the aforementioned proposed lease, and then to procure the execution of said indenture of lease by the said United Companies respectively; that it is the intention of a majority of the mem-

bers of said joint board at the earliest time practicable, to have the said indenture executed and delivered; that said majority will carry their several intentions into complete execution, and that the officers of said corporations will seal and deliver said lease, unless they and the United Companies shall be restrained therefrom." See Bill of Complaint.

Part of the prayer of the bill for relief is "that the defendants in said bill and each of them may be restrained from all further proceedings towards the execution of the aforementioned indenture of lease (meaning the aforesaid unexecuted draft of an indenture of lease), or making or entering into any agreement for the consolidation of the capital stock or business of said United Companies, or any or either of them, with the said Pennsylvania Railroad Company, and from all other proceedings, in any wise to grant, demise or lease the aforesaid canal and feeder, or railroads or their or either of their appendages and equipments, powers, franchises or privileges to the said Pennsylvania Railroad Company, and that the complainants may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience." See Bill of Complaint. A continuance of the present injunction is, therefore, seasonable and completely preventive, because it will restrain from any proceedings to negotiate and effect a similar indenture of lease, as well as to have executed the hereinbefore referred to and mentioned draft of an indenture of lease, in *totidem verbis*, and to transfer all the business of such companies, proposed lessors, to "the said Pennsylvania Railroad Company," proposed lessee, in accordance with the main

purpose of the said draft of an indenture of lease. Returning from this digression the complainants contend, that the said proposed lease itself, or any lease similar to it, in its leading and essential features, is in violation of the Constitution and laws of New Jersey. This proposition has been heretofore so fully considered, in connection with other topics, under the preceding heads of argument, that it is only necessary to restate it, by way of summary, and to present a brief review of well-settled principles of law applicable to the present question, which have been hereinbefore adduced and established, namely :

SUMMARY.

The aforementioned United Companies of New Jersey, severally or collectively, prior to March 17, 1870, did not possess any express or implied powers, privileges, or franchises to make or execute any lease of their canals and railroads, with their appurtenances, and of all their property and estate, real, personal and mixed, as mentioned and set forth in said proposed lease. An act of the legislature of New Jersey, entitled, "An act to enable the United Railway and Canal Companies to consolidate their stock, and to consolidate with other companies;" approved March 17, 1870 (the only act of the legislature of New Jersey from which the defendants in this bill of complaint, or any of them, claim or pretend to have any such power), did not confer any power or franchise on said United Companies, either jointly or severally, to make and execute said lease. The power and franchise, which said act purports to grant to the said United Companies, is only "to consolidate their capital stock, or to make

other arrangements for connection or consolidation of business," and is confined to other railroad and canal companies of the State of New Jersey "with which the said United Companies are identified in interest, or whose works form, with the works of said United Companies, continuous or connected lines," and not with any canal or railroad company of another State, or not identified in interest with said United Companies, or whose works do not form, with those of the United Companies, continuous or connected lines. The said Pennsylvania Railroad Company is not a railroad or canal corporation of the State of New Jersey; it is not identified in interest with the said United Companies or any or either of them; and its works do not form a continuous or connected line with the works of the said United Companies, or any or either of them, according to the true intent and meaning of said act. On the contrary, that company is a corporation of the State of Pennsylvania; the said contemplated lease is intended to *create* some identity of interest with the United Companies; its works, instead of being continuous or connected with, are detached and separated from those of the United Companies, as follows, viz.: either by the bridge of "the Trenton Delaware Bridge Company," the railroad of "the Philadelphia and Trenton Railroad Company," and the railroad of "the Connecting Railway Company," which extend consecutively from the westerly terminus of said United Companies' works at Trenton, in the State of New Jersey, across the Delaware River at Trenton, and thence, wholly in the State of Pennsylvania to Mantua, a distance of about thirty-one miles; or else by the open Delaware River opposite the city of Camden, in the

State of New Jersey, and the densely-populated city of Philadelphia, in the State of Pennsylvania, a distance of about three miles. There are not in the aforesaid charters of said United Companies, or either of them, or in any of the said supplementary or other acts relating thereto, any reservations of power to the legislature of New Jersey to repeal, alter, or suspend said charters, or either of them, in the discretion of said legislature, or without the consent of said companies, or their stockholders. Each of said charters was granted to said companies respectively prior to the enactment of the general act of New Jersey "concerning corporations," approved February 14, 1846, enacting in substance, that every corporation, which should thereafter be granted by the legislature, should be subject to alteration, modification, and repeal, in the discretion of the legislature. Therefore, neither of said charters can be repealed or materially altered, by the legislature, without the consent of said companies, and their stockholders; nor can any act which in itself repeals or materially alters, or which authorizes a repeal or material alteration of said charters, be or become a law, as to said companies, until accepted by their respective stockholders as a body, or so acted upon or acquiesced in, by said stockholders as a body, as to be tantamount to such acceptance.

The granting of said charters constituted a contract between the State and those companies, and their stockholders, respectively, to the effect, that no such repeal or alteration should be made without such consent, and constituted also a contract between those companies and their respective stockholders, and between said stockholders themselves, to the effect, that the manage-

ment of the affairs of those companies, respectively, should continue in substance as provided for in their charters, and that no act should be done by said companies or the directors and other officers managing and conducting their affairs which should, directly or indirectly, change materially the organic provisions in their charters, or should take from those stockholders, in whole or in part, the control of those companies, in the manner provided for in their respective charters. These contracts and any others expressed or implied, in those charters, are protected from being impaired, directly or indirectly, by the legislature, both by the Constitution of the United States and the Constitution of the State of New Jersey, unless for "a public use" of the State of New Jersey particularly designated, by statute, and ascertained and decided on by the constitutional representatives of the owner, and after compensation made to dissenting stockholders by previous payment to them of the value of their stock. The Pennsylvania Railroad Company is a railroad corporation created by and under the laws of the State of Pennsylvania, and exists only, as an "inhabitant" and *quasi* "citizen" of that Commonwealth, under and by virtue of the laws of that State, from which it derives its powers and franchises, whatever they may be. It has no franchises or powers, from the Commonwealth of Pennsylvania, to become the lessee, in the proposed lease, and, if it had, it has not and cannot have, by any assumed comity of nations, the right or power, to become the lessee of the aforesaid properties, powers, franchises, and privileges of the said United Companies, as contemplated, by said indenture of lease, for the term therein stated, or of any of those properties, and powers and privileges, for

any lesser or greater term. It is without such right or power. As such foreign corporation, it is incompetent and incapable of taking, having, holding, or using such properties, in the State of New Jersey, and of exercising those powers, franchises, and privileges, or any of them, in said State; and, it is also incompetent and incapable of discharging the numerous, multiplied, delicate, and important public trusts, duties, obligations, and other liabilities, which, by the laws of New Jersey, have been and are imposed, on said United Companies, and each of them, and, from which trusts, duties, obligations, and other liabilities, these companies, on their part, are alike incapable, of either discharging themselves or of transferring them to others.

Although the legal title, to the aforesaid properties and franchises, is in the said several corporations constituting the United Companies, yet said companies are, in truth and fact, but mere ideal or artificial persons created by law for the purpose of taking, holding, managing, and preserving the properties and relevant franchises of their stockholders, as their mere trustees; and the real, equitable, and beneficial estate and interest in said properties and franchises relating thereto, and in all the dividends and incomes accruing and to accrue therefrom, are in said stockholders. Every act or thing which takes away, destroys, endangers, or, in any wise, injures those properties and appurtenant franchises, or any of them, or lessens their value or productiveness, is an injury to those stockholders, and not to their trustees; and any act or thing which, without the consent of those stockholders, or by due process of law, destroys those trustees, to whom those stockholders have confided their property, or which prevents those trustees

from fully and freely performing their trust, or which, in whole or in part, substitutes new or other trustees, or, which constrains those stockholders, to sell, assign, or transfer their stocks or estates and interests, in said properties, to their said trustees, for their own use, or the use of any other person, natural or artificial, or, which takes, from those stockholders, their stock or estates and interests, in those properties, for other than "a public use," within and for the benefit of the State of New Jersey, or which, for such "public use," takes from those stockholders their stock, or estates and interest, in those properties, without "just compensation being first made" to them, is an unjust and unconstitutional act, violative of the just and legal rights of those stockholders over their own property, and an impairing of the incidental contracts, between the State of New Jersey and those corporations, between those corporations and their respective stockholders, and between the said stockholders themselves. The said act of the legislature of New Jersey, on which a majority of the members of the said board of the United Companies rely, for their right and power, to make said indenture of lease, if it can or ought to be construed, to authorize or justify the making of such lease to said Pennsylvania Railroad Company, by said United Companies, either by themselves or in connection with the said Philadelphia and Trenton Railroad Company, is invalid, unconstitutional, and impotent, to authorize or justify the making of said lease, for the following, among other reasons, viz.:

First.—Because the canal and feeder and the railroads of the said United Companies are public highways of and within the State of New Jersey, and it is not

competent for the legislature of said State, directly or indirectly, to assign or transfer or authorize an assignment or transfer of the highways, or of the control of the highways of said State to a foreign corporation.

Second.—Because it is not competent for the legislature of New Jersey to authorize said United Companies, either in their joint or several capacity or otherwise, to make or execute the said indenture of lease, or any lease of like import, to the said Pennsylvania Railroad Company, and to deliver the demised property to that company.

Third.—Because it is not competent for the said Pennsylvania Railroad Company to take, hold, or receive the properties demised, or intended to be demised, by said indenture to it, or to perform, execute, or discharge the duties, trusts, obligations, contracts, and other liabilities of said United Companies, which constitute the greater part of the consideration for the making of said indenture.

Fourth.—Because the making of such lease and a delivery of the demised property (if it is possible to do so, to a corporation incapable of *being* in the State of New Jersey) would be a virtual dissolution or extinguishment of the said United Companies, and the substitution of “the Pennsylvania Railroad Company” in their stead, to take all their property, and to perform and execute all their powers, and to discharge all their duties, obligations, contracts, and other liabilities, without the consent of their stockholders and others to whom they are bound, and without making or providing for the first making of just compensation to those stockholders and others whose property would thereby be necessarily taken, endangered, destroyed, or injured.

Fifth.—Because the said United Companies are the trustees of their respective stockholders, who have

voluntarily committed the custody, care, and management of their property to them, and the making of such a lease and the delivery of the demised property to the said Pennsylvania Railroad Company for the term mentioned in said lease would be a substitution of that company as trustees, in the place of said United Companies, and the taking of their property from them, giving it to another, without their consent, and without just compensation, for no "public use," either in or out of this State, and would be "an impairing of the incidental contracts" between the State and those corporations, and between them and their stockholders, in violation of the Constitution of the United States and of the State of New Jersey. *Sixth.*—Because the only provision made in said act for compensating the dissatisfied stockholders for the taking of their stock is, "that its value shall be assessed as of the time immediately before the taking, but the assessment thereof shall not be made and compensation paid until after the taking," while the Constitution of New Jersey expressly requires compensation to be "first made." *Seventh.*—Because the said act requires the dissatisfied stockholders to give up their stock to their own trustees, the United Companies, to take, either for the use of said companies, or for the use of the Pennsylvania Railroad Company, and that such is not "a public use" of New Jersey, or out of it. *Eighth.*—Because said act, by requiring the dissatisfied stockholders to give up their stock to the United Companies, in order to enable said corporations "to carry into execution any agreement, contract, lease, or other arrangement, which they may deem it expedient to make," with any other of the companies mentioned in

the first section of said act, thereby delegates or attempts to delegate to said United Companies, the right to decide what constitutes a "public use" sufficient to justify "the taking of private property," which right can only be exercised directly by the legislature itself, or by some other constitutional authority of a representative character qualified to hear and decide. *Ninth.*—Because the charter of each of said United Companies commits the direct management of their affairs to a board of directors to be chosen annually by their respective stockholders; and neither of those charters is liable to be repealed or materially altered, without the consent of the company, whose charter is sought to be repealed or altered, and of all the stockholders thereof, in a body; yet, if the act in question, as claimed, authorized the execution of the lease in question, it enables the joint board of directors of the said United Companies to transfer the management of their affairs to a foreign corporation, over which they have no control, for 999 years; and yet also this act, which thus indirectly destroys those charters by transferring the possession and management of their stockholders' property to an alien corporation, has never been in any wise accepted or submitted for acceptance, to either of said companies or their stockholders. The said lease also takes away the net earnings and profits, the means of making such profits, and the control of their property from said stockholders; it assigns the possession and management of the property represented by the stock, and substitutes therefor a mere promise of the lessee to pay a fixed rent, without any real security for payment of the same.

V. The said lease or any similar lease, will, if exe-

cuted and carried into effect, be contrary to equity and good conscience, and tend to the manifest wrong and injury of the complainants. This proposition has, to a great extent, been established by the preceding argument; but, there are features in this lease which show it to be peculiarly inequitable and unconscionable, and evince that it should be prevented by a court of equity. If it is not objectionable on the ground of being in violation of the Constitution and laws of New Jersey, it is objectionable on the ground of its being unconscionable and inequitable, in many of its leading features. It is a good defence to a bill for a specific performance, that the bargain is hard, unequal and oppressive, and will operate in a manner different from that which was in the contemplation of parties, when it was executed. *Western Railway vs. Babcock*, 6 Metc., 346, cited in Redf. Am. Railway Cases, 212. The common law maxim, "*careat emptor*," does not apply in a court of equity, called on either to enforce an unconscionable or hard bargain, or to prevent it. A court of equity may not always be governed by the spirit of the civil law, which enjoins fairness and equality, when called on to interfere with an executed contract, or to affect vested rights. The unconscionable and inequitable features of said lease, or of any similar lease, are as follows, namely: 1. The rent or dividend of ten per cent. per annum, stipulated for, is a wholly inadequate return or compensation for a transfer of the valuable and highly remunerative works and franchises of the lessors to the lessee. The average of net profits for thirty-eight years, from 1832 to 1870 inclusive, the whole period of the existence of the companies, was $12\frac{20}{100}$ per cent. per annum. There

can be no reasonable moral doubt that henceforth the companies will be able to earn net profits equivalent, at the least, to fifteen per cent. per annum. 2. The covenant and guarantee of the Pennsylvania Railroad Company to pay a rent equivalent to a dividend of ten per cent. per annum, on the capital stock of the lessors, for 999 years, is not safe or reliable, to the extent of a substitution of said guarantee for the valuable real, personal, and mixed estate of the lessors, transferred to said Pennsylvania Railroad Company by the proposed lease. The said lease violates the good faith of the corporators of the lessors to their mortgage bondholders, whose moneys have paid for nearly half the cost of the works of said companies. Those bondholders contracted directly with their obligors, the United Companies, who are stripped by this lease of the means of fulfilling, in a direct and immediate manner, their respective obligations. If the lessee shall, by mismanagement, either wilful or accidental, be unable to protect the obligations of said companies, they and their creditors may be remitted to expensive proceedings in equity, in a foreign jurisdiction, against the lessee, as their immediate remedy. The United Companies and the guaranteed return or *quasi* rent will also be liable for any tort committed on their works or in connection with them, by the lessee, in a common law action. They cannot relieve themselves by such lease from their corporate obligations and liabilities to the public. 3. The proposed lease is one-sided, and affords very little security to the stockholders of the companies, lessors. It is mainly made in the interest of the Pennsylvania Railroad Company. It is fair in seeming, and false in meaning. "It keeps the word of promise to

the ear, and breaks it to the hope." To verify these assertions, reference is made to the lease itself, and especially to the complete severance of the works and franchises of "the Philadelphia and Trenton Railroad Company," from the fortunes and interests of its affiliated companies, the United Companies of New Jersey, effected by it. "The Philadelphia and Trenton Railroad Company," with its Connecting Railway, is an essential part of the main trunk line between Philadelphia and New York. So highly has a close association with it been regarded by the New Jersey companies, that they, in the names of trustees, purchased and now own a considerable majority of its stock. Nevertheless, the aforementioned influential stock interest in the Philadelphia and Trenton Railroad, is assigned and transferred, by the proposed lease, to the Pennsylvania Railroad Company, so that the latter company can, next January, elect every director and officer of "the Philadelphia and Trenton Railroad Company," and then, with the consequent consent of said company, can, at no distant day, merge it into their own corporation, as may suit themselves. In that way, if not in some other way, the lease enables the lessee to sever and annul the security afforded by the business, works, and franchises, of "the Philadelphia and Trenton Railroad Company" now and heretofore closely connected with those of the United Companies of New Jersey, to the stockholders of all the companies.

It is to be noted that no adequate provision is made for keeping up the separate organization of the Philadelphia and Trenton Railroad Company. The \$10,000 per annum, allowed to the United Companies, for the necessary preservation and maintenance of their respec-

tive organizations, is inadequate to the indispensable requirements of the United Companies of New Jersey, in maintaining a watch and ward over the promised return or *quasi* rent payable to their respective stockholders, and leaves nothing for the preservation of the distinct organization, of "the Philadelphia and Trenton Railroad Company," whose "local habitation" as well as "name" is made dependent on the lessee's power and pleasure. How, then, can a vigilant observation, by the officers and agents of the Philadelphia and Trenton Railroad Company, (for the purpose of protecting its own interests, as well as the interests of the United Companies of New Jersey), of the management by "the Pennsylvania Railroad Company" of the works leased to them, "in respect to maintaining them in the order and condition of a first-class railroad," be secured, when the Philadelphia and Trenton Railroad Company is entirely controlled and directed by "the Pennsylvania Railroad Company," and is wholly dependent on it for an office and every necessity of independent corporate existence? If there are (and it is fairly presumable that there are) irredeemable ground rents payable in coin, out of real estate owned in fee simple by the lessors or some of them, and not payable by the lessors by any privity of contract, no provision is made in said lease that the lessee shall pay such ground rent. Such ground rent must therefore be paid by the lessors out of their *quasi* return or rent of ten per cent. The said lessors impliedly warrant and defend their lessee from any distress, eviction or molestation for or on account of such ground rent. Furthermore, it appears from the exhibit of the charter of the Philadelphia and Trenton Railroad Company made by

the answer of the defendants, that the said Philadelphia and Trenton Railroad Company have merely a determinable public use or right of way in their works; a right having accrued to the State of Pennsylvania, February 24, 1862, of purchasing said works at a just valuation (P. L. Penn., 1832, p. 96). No provision for such contingency is made in said lease.

4. The proposed lease provides that the lessors “shall furnish, when required, to the lessee, marketable certificates of new stock of the United Companies of New Jersey to the amount of \$2,250,000, and also \$3,000,000 of the consolidated first mortgage six per cent. coupon bonds, free of tax, of the said United Companies, to be used by the lessee in making certain stipulated improvements at ‘Harsimus Cove’ and elsewhere. What is this but watering the stock and increasing the debt of the United Companies of New Jersey? It is paying for improvements, for the almost exclusive use and advantage of the lessee without corresponding security to the lessors; because, in case of the bankruptcy of the lessee, but little use can be had or benefit derived to the United Companies in the transaction of their own proper and legal business from the contemplated large outlay by the lessee at ‘Harsimus Cove,’ even admitting that by a ‘re-entry,’ the said United Companies can ever regain possession of the properties leased by them “as of their former estate therein.” It ought to have been stipulated in said lease, that such expenditure and improvement, with a view of increasing the security of the lessors (because the usufruct of the lessee is to be for 999 years), should be made by the lessee at its own proper charge and cost. 5. The proposed lease assigns and transfers to the lessee the

absolute possession, control and disposal of the vast amount of saleable real and personal property of the lessors, which the lessee will have in its power to use and apply according to its numerous and varied necessities and at its own option. 6. The alleged remedy of "a re-entry," provided in and by the lease "for covenants broken" affords no security. It is an illusory and ineffectual remedy. It is indeed no remedy whatever. There can be no "re-entry" on public franchises and property appurtenant thereto. The canal and railroads of the lessors are "public highways," "rights of way" common to every citizen on which every citizen has a right of going, and on which there can be no private entry nor any "re-entry" for covenant broken. The lessors cannot maintain ejectment for their railroads and canals or for the necessary appurtenances or appendages thereto, which are exempt from taxation, such as stations and depots. They can only have such remedies as are appropriate to their vindication of "a right" to a franchise, or to an incorporeal hereditament, such as a "right of way." What remedy can the stockholders of said companies have, other than a bill in equity against the lessee in case of a failure to pay the rent stipulated, or non-performance of any other covenant contained in the said proposed lease? There is no such "privity of contract" between individual stockholders and the lessee as to entitle them to a common law remedy, such as an action of covenant, debt or *indebitatus assumpsit*. Their supposed right of "re-entry" and of revesting of their former position in relation to their canals, railroads and business as common carriers, is fallacious, impracticable and valueless.

On principle, in this country a railway company, by virtue of the power of eminent domain, of which they are by their charter special appointees, can acquire no absolute fee simple, but only the right to use the land for the public uses entrusted to them, namely, for the purposes of a public artificial highway. It is requisite to the efficacy of a deed of land in fee simple that the grantee be capable of taking the estate; and if the grantee be an alien or a corporation, *a fortiori* an alien corporation incapable of holding such estate, the deed is inoperative. Hence, a railway, by a deed in fee simple, acquires only a right of way, that being all which such corporation is capable of taking. By an exercise of the right of eminent domain, no more of the title is divested from the former owner than is necessary for the public use. Railways take only an easement in lands condemned for their use under an exercise by them of the power of eminent domain. The fee in the soil remains in the owner, but the use of the railroad is in the public through and by means of the railroad company, acting as their trustee. The original owner parts with this use only. If the road is vacated or abandoned by the public and the railroad company, the owner resumes the exclusive possession of the ground. He may bring an action of trespass against any one who obstructs the road. By the repeal of a charter, the lands do not revert to the former owner, but, the franchise of the corporation being resumed by the State, the railway remains public property, subject to the management and control of the State. See 1 Redf. on Law of Railways, 3d ed., sec. 69, pl. 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 14, pp. 247-8-9-250-1-2-3-4, and notes 1, 2, 4, 5, 6, 10, 11, 12, 14, 15,

16, 17; *Barclay vs. Howell's Lessee*, 6 Pet., 498; 3 Kent's Com., 432, and notes. It has been held in Pennsylvania that on a cessation of a use of a canal constructed by the Commonwealth, land taken and paid for in perpetuity by the Commonwealth did not revert to the former owner. This case must rest on the principle of a relinquishment of his resulting use by the private owner of the soil on a consideration paid. *Haldeman vs. Penn. R. R. Co.*, 50 Penn. St., 425. Land taken by a railroad company is a mere easement, or servitude on land. *Hill vs. West Vt. R. Co.*, 32 Vt. R., 68; *Red. Am. Rail. Cases*, 253; *Ib.*, note on p. 259.

“A right of way,” considered as a species of incorporeal hereditament, is “the right” of going over another man's grounds, in which a particular person may have an interest and a right, though another be the owner of the soil. *Burns' Law Dic.*, Title “Way,” citing 2 Bl. Comm., 35. “A public highway” is the right of way possessed by the public at large and by every citizen. A right of way is an incorporeal hereditament lying in grant and not in livery of seisin. *Shepp. Touchstone*, Tit. “Lease,” ch. 14, p. 258. A railroad or a canal is a public way over land, on which every citizen has a right to go for the purpose of using it, and which public way every citizen has a right to use on paying the legal tolls, fare, or freight provided as a compensation for its construction and maintenance by the corporation to whom has been entrusted the public franchise of constructing and maintaining it. A canal company has no right to refuse permission to passengers to pass through its canal. Any one has a right to use the canal on paying or offering to pay the toll

prescribed by the charter of the company, and the company cannot exact any toll other than such as is allowed by its charter. *Perrine vs. Chesapeake Canal Co.*, 9 How. 172; *Camden R. R. Co. vs. Briggs*, 2 N. J. 623; *Acc. Beekman vs. Saratoga & Schenect. Railroad Co.*, 3 Paige 45, cited in *Redf. Am. Rail. Cases*, 224. A seeming conflict between the cases in respect to the interest acquired by a railway when land is condemned to them in fee or granted to them in fee, whether the *corpus* of the land in absolute fee is acquired or a right of way in determinable fee, may be reconciled by the reasonable and legal principle that where the land taken is used exclusively for an artificial public highway, an easement in determinable fee is acquired; *aliter*, an absolute fee is acquired in the *corpus* of the land where the public use gratified is not strictly that of an artificial public highway, but a public use readily distinguishable from it, such as an use of a public almshouse, courthouse, arsenal, public school-house, and such like.

“Re-entry” is the resuming or taking possession of *land*, which the party lately had; as, if a man makes a lease of land to another, he thereby quits the possession, and if he covenants, with the lessee, that for non-payment of rent at the date, it shall be lawful for him to re-enter, this is as much as if he conditioned again to take the land, into his own hands, and to recover possession by his own act, without the assistance of the law; but, words in a deed give no re-entry, if a clause of re-entry be not added. *Wood. Inst.*, 140, cited in *Burns’ Law Dic.*, Tit. “Re-entry.” Ground-rent deeds and leases frequently contain a clause authorizing the landlord “to re-enter,” on the non-payment of rent, or the breach of some covenant, when the estate is forfeited.

Forfeitures for the non-payment of rent are the most common. When such a forfeiture has taken place, and the lessor or his assigns have a right to repossess themselves of the demised premises, great nicety must be observed in making such re-entry. There must be a demand of the rent; the demand must be of the precise rent due, for the demand of a penny more or less will avoid the entry. If a part of the rent be paid, a re-entry may be made for the part unpaid. It must be made precisely on the day when the rent is due and payable, by the lease, to save the forfeiture; as where the lease contains a proviso that if the rent shall be behind and unpaid, for the space of thirty days, or any other number of days, it must be made on the thirtieth or last day. It must be made a convenient time before sunset, that the money may be counted and a receipt given while there is light enough reasonably to do so. Therefore, proof of a demand, in the afternoon, is not sufficient. It must be made upon the *land*, and at the most notorious place. Therefore, if there be a dwelling-house upon the land, the demand must be made at the front door, though it is not necessary to enter the house, notwithstanding the door be open. If wood land be the subject of the lease, the demand ought to be made at the gate, or some highway leading through the wood, as the most notorious; unless a place is appointed, where the rent is payable, in which case, demand must be made, at such place, for the presumption is, the tenant was there, to pay it. A demand of the rent must be made, in fact, although there be no person, on the land, ready to pay it. If, after these requisites have been performed, by the lessor or reversioner, the tenant neglects or refuses to pay the rent, and no suffi-

cient distress can be found on the land, then the lessor or reversioner is to "re-enter." He should then openly declare, before the witness he may have provided for the purpose, that, for the want of a sufficient distress, and because of the non-payment of the rent demanded, mentioning the amount, he "re-enters" and "repossesses himself of the land." Bouv. Law Dic., Tit. "Re-entry," 1 Inst. 201. By such re-entry a lessor obtains "an entry," and is not put to "a right of entry." He may, to enforce such entry, if resisted, have his proceeding of "forcible entry and detainer," which is speedier and more summary than an ejectment or any possessory action brought on "a right of entry," "the entry" being lost. But there must be an estate in the land, in a corporeal hereditament to warrant a re-entry. There can be no re-entry on a right of way, or any incorporeal hereditament. In this respect, therefore, the lease is illusory and deceptive, and therefore void, on account of manifest misrepresentation and fraud. The *preventive* remedy of equity is now invoked. The Chancellor is not asked to avoid, rescind or otherwise interfere with an *executed* contract. The lease is yet "*in fieri*."

7. The proposed lease for the long term of 999 years, by legal presumption, is taken out of and from an interest of greater duration, capable of sustaining a *quasi* reversion, and must therefore rest on the certain continuance of that larger interest beyond the term of such lease. If such *quasi* reversionary interest is dependent on circumstances, if a continuance of its supporting franchise is uncertain, or if it may be defeated by a condition, such lease, together with its annual return, in a *quasi* rent, to wit, the guaranteed divi-

dends, will fall with such cessation, discontinuance or defeasance, and the lessee, moreover, will have good cause of action for a disturbance and a claim for pecuniary damages against such lessors. Now, it is well known that the State of New Jersey has attached a condition to its grant of franchise to the United Companies respectively, namely, that the State may take the works of said companies in 1889, on a just valuation. If the State should so do, either at the suggestion of the lessee, its successors or assigns, or of its own motion, in 1889, it may be inquired who will have the right to receive, from the State, the pecuniary consideration for such assumption? Clearly, so far as its leasehold of 999 years (which may be practically regarded as almost equivalent to the whole interest), is involved, the lessee will be entitled to a very large compensation for a deprivation of the usufruct for a very long period of a most valuable and remunerative property. What will be the appraised value as respects the stockholders of a *quasi* reversionary interest (after the expiration of 999 years), and what would be the proportion payable to them of the amount to be paid by the State? What then will become of the *quasi* security afforded by the usufruct of the leased property for the payment of the annual dividend of ten per cent. by the said lessee to the said stockholders, and what then will be the right of the stockholders to claim from the lessee such dividends by way of *quasi* rent or return?

Suppose that such purchase money payable by the State, is invested for the benefit of the parties in interest, during the said term of 999 years, what proportion of such interest would be payable to the lessee and what to the lessor, especially if such investment should

yield, per annum, four per cent., or even less? Who can measure the litigation that may ensue, or its results? Unquestionably the covenant of the lessee to pay a *quasi* rent or return for the leased premises in the shape of dividends, would cease with their disturbance by the State; and the purchase money payable by the State, if not exhausted, would be largely diminished by the claim of the lessee, for damages for such disturbance, in the face of the implied warranty of defence for 999 years given by the lessors. If the intervention of this Court had not been sought by these complainants, and the proposed lease had been consummated with the *unanimous* consent of all parties in interest, including the respective States of Pennsylvania and New Jersey, the shareholders and mortgage bondholders of the respective corporations, lessors and lessee, the *legal* position of the respective parties to said lease would have been as follows, viz.: The lessee would have a leasehold interest for 999 years (so far as the leased works, with their appurtenances, are concerned), in a servitude or easement on certain lands of certain private citizens of New Jersey, viz.: a right of public highway (on which lands, for such purposes of way, every citizen of New Jersey has a right to go, and which servitude or easement is an incorporeal hereditament); and (as respects other lands of the lessors not appurtenant to their respective canals and railroads) a leasehold for 999 years in an estate for the life of said corporations, lessors, respectively, viz.: in a determinable freehold estate. In respect to such interest in the aforementioned easement or right of public way, a shifting use (to shift on the contingency of paying for said works or easement *actual cost*) is lim-

ited to the State (in and by the appointment of public uses under the power of eminent domain contained in the charters of the respective companies of New Jersey, lessors), and in respect to the aforesaid leasehold interest in the determinable fee (possessed by the said New Jersey companies, lessors, in the aforesaid non-appurtenant lands), there is a contingent estate in perpetuity vested in the State by way of contingent remainder; the said shifting use and the said contingent remainder, respectively, arising in 1889. What power or right, then, can the said New Jersey companies have to lease such aforesaid determinable interests or estates, for 999 years, to said lessee? If they have not any interest surely vested and indefeasible for 999 years, it is manifest that the New Jersey companies, lessors, cannot keep or perform an implied covenant to warrant and defend the demised premises, and would have largely exceeded their leasing power and ability, and thus have exposed the trusts confided to them to contingent heavy pecuniary loss and damage for disturbance and eviction of the lessee in 1889. See *Ang. & Am. on Corp.*, 9th ed., sec. 195, p. 166, and cases cited in notes 3, 4, 5, and 6, on p. 166, and in notes 1, 2, 3, and 4 on p. 167; *Wilson on Springing Uses*, c. 2, pl. 1, p. 18 of vol. 11 Law Library, and p. 47 of Treatise; *Id.*, c. 4, sec. 11, 12, 13 p. of Treatise, 149, of Law Library paging, 55.

VI. The complainants, by reason of such manifest wrong and injury, are without adequate remedy other than the protection, by the preventive writ of injunction prayed for in the bill, and are, under and by virtue of the Constitution of the United States, the Constitution of the State of New Jersey, and the laws of New Jersey, entitled to the protection afforded by said writ of injunc-

tion. The complainants are respectively stockholders representing large amounts of stock in the several companies of the United Companies of New Jersey, proposed lessors in said lease, as is mentioned and set forth in their bill of complaint, and they exhibit said bill of complaint as well for themselves, as for any others of the stockholders of said companies, or either of them, as may hereafter choose to come in and cause themselves to be made parties complainants to said bill, except such stockholders as may be deprived of a right to complain of the acts complained of in said bill. See Bill of Complaint. The wrong and injury, to which these complainants are exposed by an unrestrained execution of the proposed lease, have been fully exhibited in and by the preceding argument (summarily stated under the next preceding head), and have been before made manifest, it is believed, to the mind of the court. A repetition, under this final head of argument, is, therefore, needless. It remains only to show, in a brief manner, that the complainants are without adequate remedy other than the protection by the preventive writ of injunction prayed for in said bill, to which they are constitutionally and legally entitled. The corporations, defendants, are joint-stock railroad and canal companies, respectively. A joint-stock corporation has for its object a dividend of profits among its stockholders. A corporation of this sort is invariably empowered to raise a certain amount of capital by the mutual subscription of its members, and this capital is divided into shares, which are made to vest in the subscribers, according to their respective contributions, and they entitle the holders of them to a corresponding proportionate part of the profits of the undertaking.

Ang. & Am. on Corp., 9th ed., sec. 556, p. 553. The directors of a company have no right to declare a dividend except from the profits of the company; but it is not necessary that the cash shall be actually in hand; and it has been held that the balance sheet of a company engaged in a hazardous trade will not be considered delusive and fraudulent, merely because an estimated value is put on assets of the company which were then in jeopardy, and which were subsequently lost, or because the company was obliged to borrow money to pay the dividend, provided the facts appear fairly on the balance sheet and the balance fairly represents assets. See *Stringer's case*, Law. Rep. 4, ch. 475, cited in Ang. & Am. on Corp., 9th ed., note a, on p. 556, sec. 557. A share in a railroad or canal company may be defined to be a right to partake, according to the amount of the party's subscription, of the surplus profits obtained from the use and disposal of the capital stock of the company, to those purposes for which the company is constituted; for the exercise of the corporate franchise being restrictive of individual right, such franchise cannot be extended beyond the letter and spirit of the act of incorporation. Ang. & Am. on Corp., 9th ed., sec. 557, p. 554; sec. 111, p. 87, and cases cited in note 3.

A share of stock in a railroad company (it is so especially provided in the respective charters of the United Companies of New Jersey) must be regarded as personal property, independently of any enactment to that effect; and this notwithstanding it, in a measure, arises out of realty, it being only the surplus profits that are divisible among the individual shareholders. The lands, buildings, &c., of canal, turnpike, and rail-

road companies are the mere instruments whereby the joint stock of the company is made to produce a profit, and, moreover, belong exclusively to the corporate body which is altogether a separate person from the individual members. The franchises and powers conferred on a corporation are for the purpose of enabling it to take and manage the joint stock of money subscribed by its individual stockholders, which is entrusted to it. Such franchises and powers render the use of joint stock, by the parties corporate, more profitable, but they form no part of the joint stock itself. The property is money or that which has been acquired or purchased by the use of money subscribed by individual corporators, and in order to make such subscriptions profitable, such money is entrusted to the corporation, which has certain franchises and powers (appropriate to the purpose and object specified in its charter) of converting said money into real, personal, and mixed property. The purpose of all this is, the obtaining of a clear surplus profit, from the use and disposal of the capital, for the individual contributor. *Ang. & Am. on Corp.*, 9th ed., sec. 557, pp. 555-6. Dividends divisible among the shareholders must be considered as their property, and cannot be applied by the directors to any purpose not included in their charter, without the consent of the shareholders. *March vs. Eastern R. R. Co.*, 43 N. H., 515. A board of directors are agents of the corporation, only so far as authorized, directly or impliedly, by the charter; and the general authority given by the act to directors to manage stock, property, and affairs of the corporation does not enable them to apply to the legislature for an enlargement of the corporate powers; and a legislative resolve passed

upon such an application, without authority from the company, is void. *Ang. & Am. on Corp.*, 9th ed., sec. 280, p. 271. Courts of equity will enjoin a railroad company from applying its funds to pay the expenses of parliamentary proceedings to obtain an enlargement of its corporate powers. 1 *Redf. on Law of Railways*, sec. 142, pl. 6, note 16, p. 592 (3d ed.). The property of every member of a turnpike corporation is a right to receive a proportionate part of the toll, which is considered personal property. *Tippets vs. Walker*, 4 *Mass.*, 595. A corporation may be seized of real property as well as of a great deal of personal property; but the interest of each individual stockholder is a share of the net produce of both when brought into one fund. *Bradley vs. Holdsworth*, 3 *M. & W.*, 324. When a dividend is declared, it becomes a debt due from the corporation to the individual stockholder; and if the corporation deposit the money with a banking company, it does not thereby release itself, but is liable to the stockholder in case of a failure of the banking company to pay the money. *King vs. Paterson R. R. Co.*, 5 *Dutch.* 82, 504. If an unincorporated company purchases property, each individual stockholder has an interest in it; but the moment the company becomes a corporation the corporation is invested with the legal title, and has the property in trust for the individuals. *Ang. & Am. on Corp.*, 9th ed., sec. 559, p. 557.

Shares in joint-stock companies are not, however, strictly speaking, chattels, and it has been considered that they bear a close resemblance to choses in action; or, in other words, that they are merely evidences of property; they are mere demands for dividends, as they become due, and differ from movable property in

not being susceptible of possession and manual apprehension. Ang. & Am. on Corp., 9th ed., sec. 559, p. 557; *Slaymaker vs. Gettysburg Bank*, 10 Barr, 373. Certificates of stock are not securities for money in any sense; much less are they negotiable securities; they are simply the muniments and evidences of the holder's title to a given share in the property and franchises of the corporation, of which he is a member. *Mechs. Bnk. vs. N. Y. R. R. Co.*, 3 Kern, 627; *N. Y. R. R. Co. vs. Schuyler*, 17 N. Y. Rep., 592. By "bank stock" is meant individual interest in the dividends as they are declared, and a right to a *pro rata* distribution of the effects in hand, at the expiration of the charter. And the capital stock of a bank is the whole undivided fund paid in by the stockholders, the legal right to which is vested in the corporation to be used and managed in trust, for the benefit of the members. The value of the stock will, of course, depend on the condition of the corporation; but the corporation, so far as its own property is concerned, is not affected by that value. *Union Bank of Tenn. vs. The State*, 9 Yerg., 490; *Hart vs. State Bank*, 2 Dev. Eq., 111; *Brightwell vs. Mallory*, 10 Yerg., 196; *State vs. Franklin Bank*, 10 Ohio, 90, 97. Where personal property belongs to the members of a voluntary unincorporated association for public and not for private purposes, if a member abandons the association, he thereby abandons his interest in such property, and those who remain are entitled to such interest. *Curtis vs. Hoyt*, 19 Conn., 154. A share of stock in a corporation is a mere ideal thing; it is no portion of space; it is not susceptible of tangible and visible possession, actual or constructive; it is not, therefore, "a chattel personal" susceptible of

possession, actual or constructive. If a right be an ideal thing merely, or something existing but in law or contract, the possession must be ideal, subsisting from law or contract. *Arnold vs. Ruggles*, 1 R. I., 165, cited in *Ang. & Am. on Corp.*, 9th ed., sec. 562, p. 560. A share of capital stock in a joint-stock railroad corporation is, therefore, an equitable interest, of which the corporation holds the legal title; the stockholder is the *cestui que* trust and beneficiary of the corporation, in respect to the corporate franchises, privileges, powers, and property in which he has an interest, evidenced by his certificate of a share or shares of such stock.

A court of equity is the proper guardian of such equitable interest or chose in action. A court of law can afford no adequate protection to such "an equitable chose in action," either preventive or remedial. In the present proceeding a preventive protection is prayed for, which a court of law cannot adequately afford to the complainants. A court of equity will restrain railway companies from carrying contracts of leasing into effect without the authority of the legislature. *Winch vs. Birkenhead, L. & C. Railway*, 13 Eng. L. & Eq., 506; *Beman vs. Rufford*, 1 Simons (N. S.), 550; s. c. 6 Eng. L. & Eq., 106; *East Lancashire Railway vs. L. & Yorkshire Railway*, 25 Eng. L. & Eq., 465; *Stevens vs. South Devonshire Railway*, 2 Eng. L. & Eq., 138; *Great Western Railway vs. Rushout*, 10 Eng. L. & Eq., 72. Where the court having jurisdiction to award a writ of injunction or mandamus is not the court of last resort, the judgment or decree upon application for such writ is revisable on appeal or error. *Holmes ex parte*, 14 Pet., 540, and other cases cited in 2 Redf. on Law of Railways, 3d ed., sec. 200, note 1, p. 295.

When a writ is denied as a matter of mere *discretion*, such denial is not revisable ; *aliter*, where it is denied on legal grounds. A bill of complaint may be filed against a corporation by one of its own members. In this respect the cases of corporations are entirely dissimilar to those of ordinary co-partnerships, or unincorporated joint-stock companies. In the former (namely, corporations), the individual members of the company are entirely distinct from the artificial body endowed with corporate powers. Ang. & Am. on Corp., 9th ed., sec. 390, p. 413 ; *Pierce vs. Partridge*, 3 Metc., 444 ; *Waring vs. Catawba Co.*, 2 Bay, 109. Where the legal remedy against a corporation is inadequate, a court of equity will interfere and a bill in equity will lie against a corporation by one of its members. It is a breach of trust towards a stockholder in a joint-stock corporation established for a certain definite purpose prescribed by its charter, if the funds or credit of the company be, without his consent, diverted from such purpose, though the misapplication be sanctioned by the votes of a majority, and therefore he may file a bill in equity against the company in his own behalf, to restrain the company by injunction from any such diversion or misapplication, and such a bill of a single corporator against the corporation may aver that it is filed in behalf of himself and all others similarly situated. Ang. & Am. on Corp., 9th ed., sec. 391, p. 414. *Ware vs. Grand Junc. Water Co.*, 2 Russ. & M., 486 ; *Natusch vs. Irving*, Gow. on Partn., App. 2, per Lord Eldon. *Wood vs. Draper*, 24 Barb. 187. It is beyond the power of railway companies to combine their interests without an enabling act of the legislature, and it is held that a single shareholder is entitled to apply to

a court of equity to restrain such an attempt, and it is competent for one shareholder to maintain a bill for an injunction restraining the company from doing an act beyond the range of the statutory powers conferred on them. *Charlton vs. New Castle and Carlisle Railway Co.*, 5 Jur. (N. S.), 1096; cited in 2 Redf. on Law of Railways, 3d ed., sec. 252, pl. 3, p. 658. See also *Ware vs. Regent's Canal Co.*, 5 Jur. (N. S.), 25; *De Gex. & J.*, 212; 2 Redf. on Law of Railways, 3d ed., pl. 2, p. 637, note 5. A railway company associating, allying and connecting itself with another in regard to traffic in which they have a common interest is not amalgamation between the two companies. An amalgamation implies such a consolidation of the companies as to reduce them to a common interest. 2 Redf. on Law of Railways, 3d ed., sec. 253, pl. 1, p. 659, and cases cited in note 1. See also *Shrewsbury & B. R. vs. Stour Valley & London & N. W. R.*, 2 DeG., M. & G., 866; s. c. 21 Eng. L. & Eq., 628.

Indeed, an investment in the stock of any corporation must, by every one, be considered a wild speculation, if it expose the owners of the stock to all sorts of risk, in support of plausible projects not set forth and authorized by the act of incorporation, and which may possibly lead to extraordinary losses. A corporation ought to be a party defendant to a bill in equity praying for an injunction to prevent illegal action by said corporation. *Ang. & Am. on Corp.*, 9th ed., sec. 391, pp. 414, 415. A stockholder may institute his suit in his own name, in equity, against a wrong-doer, whose acts operate to the prejudice of the interests of the stockholders, where the directors of the company, on application made to them, refuse to institute a suit in

the name of the company. *Dodge vs. Woolsey*, 18 How., 331; *Memphis City vs. Dean*, 8 Wall., 64; *Sweny vs. Smith*, Law Rep., 7 Eq., 324, cited in footnote A to sec. 370, p. 392, of *Ang. & Am. on Corp.*, 9th ed. A corporation owning a toll bridge may maintain a suit in equity to restrain a city from unlawfully laying out the bridge as a highway. *Centr. Br. vs. Lowell*, 4 Gray, 474, cited in note 5, to *Ang. & Am. on Corp.*, 9th ed., sec. 370, p. 392. The acts of directors of a corporation (in diverting the corporate moneys for a purpose different from what was originally contemplated against the will of a single stockholder), as representatives of the corporation, are the acts of the corporation itself, and the company cannot be bound by a decree of a court of chancery unless it were a party in its corporate character. *Bagshaw vs. Eastern Counties R. R. Co.*, 7 Hare, 114; 1 Beav. 1.

Where the directors of a railroad company, for the purpose of increasing their traffic, proposed to guarantee certain profits, and secure the capital, of an intended steam-packet company, who were to act in connection with the railroad, it was held, in the first place, that such a transaction was not within the scope of their powers, and they were restrained by injunction; and, in the second place, that, in such case, one of the shareholders of the railway company was entitled to sue, in behalf of himself and of other shareholders, except the directors who were defendants, although some of the shareholders had taken shares in the steam-packet company. It was contended, in that case, that the corporation might pledge, without limit, the funds of the company for the encouragement of other transactions, however various and extensive, pro-

vided the object of that liability was to increase the traffic upon the railway, and thereby increase the profit to the shareholders; but, it was held that there was no authority for anything of that kind. *Colman vs. Eastern Counties R. R. Co.*, 10 Beav., 1, cited in *Ang. & Am. on Corp.*, 9th ed., sec. 391, pp. 415, 416. It is not only illegal for a corporation to apply its capital to objects not contemplated by its charter; but also, to apply its profits; and, therefore, a stockholder may file a bill in equity against the directors and company, to have refunded to him any of the profits thus improperly applied. It is an improper application for a railway company to invest the profits of the company, in the purchase of shares of another company, and it cannot be authorized by legislative sanction. The dividends which belong to the stockholders, may be applied, by themselves, as their own property; but, the company itself, or the directors, or, any number of stockholders assembled, at a meeting or otherwise, have no right to dispose of the shares of the general dividends, which belong to a stockholder, in any manner contrary to the will, or without the consent or authority of that particular stockholder; and a court of equity will enjoin against any such illegal disposition of property. *Ang. & Am. on Corp.*, 9th ed., sec. 392, p. 416; *Salomons vs. Laing*, 12 Beav., 339, 377.

Therefore, although the result of the authorities clearly is that, in a corporation acting within the scope of, and in obedience to, the provisions of its charter, the will of the majority, duly expressed at a legally constituted meeting, must govern, yet, beyond the limits of the act of incorporation, the will of the majority cannot make an act valid; and the powers of a court of

equity may be put in motion at the instance of a single shareholder, if he can show that the corporation are employing their statutory powers for the accomplishment of a purpose not within the scope of their institution. Ang. & Am. on Corp., 9th ed., sec. 393, p. 416, and cases cited in note 3; *Gifford vs. N. J. R. R. Co.*, 2 Stock., 471; *Kean vs. Johnson*, 1 Stock., 401. Where a bill of complaint was filed, on a motion made, in behalf of a minority, for an injunction to restrain the majority of the members of a corporation from surrendering their charter, with a view to obtain a new charter for an object different from that for which the original charter was granted, the court granted the injunction. *Ward vs. Society of Attorneys*, 1 Coll., 370. A bill in equity can not only be maintained by a shareholder against a company of which he is a member, but one may be maintained also against another distinct company to which the former has united itself by the application of its moneys for the purposes of the latter. The latter company are supposed to have full notice of the only legal purpose for which the moneys of the former could be appropriated, and having such notice, and avowedly thus receiving money for the purpose of applying it to an illegal purpose, for which it is expressly paid, it is guilty of fraud. Both companies are guilty of fraud against the legislature, which incorporated them for different purposes; and are guilty of collusion, also, in uniting and combining for the purpose of completing the fraud. It is enough to say that they are parties to the same breach of trust, one in paying, and the other in receiving, the money for a known illegal purpose; and both, therefore, may be made parties to a bill in equity in a suit by a shareholder in the former

company. *Salomons vs. Laing*, 12 Beav., 339, 377, cited in *Ang. & Am. on Corp.*, 9th ed., note 3 to sec. 393, p. 416; *Ib.*, sec. 393, p. 417; *Allen vs. Curtis*, 26 Conn., 456; *McAleer vs. McMurray*, 58 Penn. St. R., 136.

An injunction against a corporation cannot be dissolved on bill and answer, unless the answer is duly verified by the oath of some of the individual members who are acquainted with the facts stated therein, because it is not a matter of course to dissolve an injunction where the defendant acts in a representative capacity, and bases his denial of the equity of the bill upon hearing and belief only. Corporations act under seal and without oath; they are, therefore, at liberty to deny anything contained in the bill, whether true or false. Therefore, no dissolution of an injunction can be obtained upon the answer of a corporation which is not duly verified by the oath of an officer of the corporation or other person who is acquainted with the facts contained therein. *Ang. & Am. on Corp.*, 9th ed., sec. 678, p. 671; *Fulton Bank vs. N. Y. Canal Co.*, 1 Paige, 311. Where an injunction is to prevent an alteration in the state of property, to prevent the corporation seal being put to securities until an opportunity is afforded of having the matter fully discussed, it is not, in point of property, an injunction which can occasion any mischief whatever. *Ld. Ch. Cottenham*, in *Warburton vs. London and Blackwall R. R. Co.*, 1 *Railway Cases*, 558, cited in 2 *Redf. on Law of Railways*, 3d ed., sec. 219, pl. 4, pp. 352-3-4. A simple denial of the equity of the bill will not dissolve an injunction when the dispute is not about facts, but is a question of law. *Boston Franklinite Co. vs. N. J. Zinc Co.*, 2 *Beasley*, 215, cited in note 2 to 2

Redf. on Law of Railways, 3d ed., p. 352. If it is argued by the counsel for the defendants that a decision, by the court, in favor of the complainants on the prominent ground that foreign corporations cannot lease the franchises and railroads and canals of a railroad or canal company, without the unanimous consent of the stockholders of such corporation, express or implied, and without special permission or authorization of the legislature of the State in which such corporation has its corporate residence, will be very inconvenient to the railway operations of the country by disturbing existing or contemplated arrangements for railway or canal extension (by means of leases) of the railroads or canals of one State into or through another State, our reply is that an argument, *ab convenienti*, with whatever propriety it may be addressed to a legislative body, is entirely out of place when addressed to this court, even by way of appeal to its discretion. The Chancellor will not "make equity and constitutional law," but will pronounce and administer them respectively.

Again, a decision in this case, although it must be only a pronouncement or declaration of the principles of equity and constitutional law applicable to the case, and not a legislative remedy, by way of an alteration of settled principles of law, in aid of a grasping corporate policy, will, in point of fact, produce but little, if any, inconvenience in respect to the past, while it may be of great public utility in legally and constitutionally arresting threatened mischiefs growing out of a lust of corporate aggrandizement and monopoly to be effected by means of such extension and absorption as is contemplated in and by the proposed lease. In

respect to any lease similar to the lease now in question, which has been consummated, without dissent or opposition on the part of any stockholder or other party in interest, seeing that “*Communis consensus facit jus et tollit errorem*,” and that every one having any right to object or complain in equity is content, the injunction now prayed for, if allowed by this court, can have no possible influence in disturbing or otherwise affecting such consummated agreement or lease. Such a decision, by this court, in affirmance of well-settled principles of equitable and constitutional jurisprudence, must exert a salutary influence in preventing similar arrangements in the future, if attempted without the unanimous consent and concurrence of all parties in interest. If such shall be its influence and effect in the future, the sacred obligations of contracts and the rights of private property will be effectually guarded and protected, while a safe policy of internal improvement, in harmony with wise and well-settled principles of political economy, will be encouraged and commended. Where one railroad connects with another, so that the cars pass from one road to the other, it is not necessary, for the public accommodation, or for the profit of stockholders, to extend railroads, by lease or purchase of directly connecting railroads. The usage of the railroad world is to connect with each other, and traffic will seek its natural channels, from one State to another, and the last link in the route to a great metropolis is necessarily the most valuable, as it is the final gathering up of the traffic of all the others. The railroads and canals of the companies sometimes termed “the United Railroad and Canal Companies of New Jersey” are invaluable. They are the last link in the route

between the great seaboard cities of the Union on the Atlantic slope, leading to the present commercial metropolis of the North American continent, and also in the route between the important seaports of this country, on the Pacific Ocean, and the commanding city of New York. The location of said works is the best in the United States; they are in good order and capable of doing all the business, which will ever come to them, from the South and West or between Philadelphia and New York. Why then should those companies be constrained to part with such last link, and to allow other and foreign corporations to go beyond their natural territorial boundaries? It is their only natural, public and private policy and interest to take just care of their own assigned locality; to administer conscientiously and energetically the vast public business confided to them; and to cultivate friendly and liberal relations with all other companies who may have occasion to use their works, by proper and legally authorized connections with them.

Before closing, a brief notice is due to the *answer* of "the United Companies of New Jersey," which has been filed since the preparation of this argument. It is the answer of the three corporations, which are termed, "the United Canal and Railroad Companies of New Jersey." It is made under the respective corporate seals of said corporations. Except when and so far as said answer is verified by the affidavit of some official or other person acquainted, of his own knowledge, with the facts (averred by way of denial of the equity of the bill), contained in said answer, and not from information and belief concerning such facts, said answer is not responsive to the bill, and cannot be

regarded as a denial of the equity of the bill. *Fulton Bank vs. New York Canal Co.*, 1 Paige, 311; *Angell & Ames on Corp.* (9th ed.), sec. 678, p. 671, etc. The remarks in respect to said answer, made by the Chancellor on the occasion of the motion for an allowance of further time, for the purpose of examining the said answer, submitted by the counsel for the complainants, on 25th of July last,—the day of the filing of said answer,—as carefully taken down in shorthand, and are appropriate, concise, and express all that need be said, by way of comment, on the general nature and character of the said answer, especially when it shall hereafter be critically examined, in the light of the argument furnished, by the counsel of all the parties in this proceeding.

Those remarks are therefore referred to, as follows, namely: The Chancellor said: “When the rule to show cause in this case was granted, an unusual length of time was allowed, and I then mentioned to the counsel of the complainants, that I would expect them to be ready to-day, to proceed with the cause. The time has been sufficient to prepare, on the side of the complainants, unless the answer of the defendants put the matter in an entirely new and different light. The answer of the defendants, as read, is long, not much longer than the bill; but the great part of that answer is made up of admissions of the facts charged in the bill,—admitted shortly, it is true, not spun out to a great length; but each separate fact, each separate act, each separate organization, the acceptance and approval of each act of the legislature, is distinctly admitted by itself. I noticed carefully the reading of the answer, and there appeared to me to be *few or no new facts*. One, two, or

perhaps three of the facts charged, by the complainants in the bill, are denied. One, that appeared to me, upon the original reading of the bill, to be *important and does now, was whether there was a connection between the roads in question and the Pennsylvania Railroad*. A large part of the answer is taken, in denying—not a mere simple denial (*which would have been of no avail in such a case*), but, *denying (by setting forth the facts)*,—the allegation in the bill, that there was no connection, between the Pennsylvania Railroad, the *proposed lessee*, and the *present roads*. Another part of the answer denies the fact stated of the expected income of the roads, under their present management and organization. The bill states that they might make fifteen per cent. under good management, as at present organized. Another long part of the answer is denying that fact.”

“Counsel have not pointed out to me any matter, in the answer, that is *new, any matter that changes the case, as they may be supposed to have come prepared for arguing it*. Counsel, in preparing for arguing a cause like this, do not come expecting that the defendant will admit everything, that is charged against him. *These matters are matters responsive to the bill*. Counsel ought to have come prepared, upon their being denied, to contest the case, upon a denial being put in. In these injunction cases, the remarks of the opening counsel are very *sensible*, and addressed to the *discretion* of the court, *which ought to be exercised in favor of a full hearing of all parts of the case*; and, though I do not see what the surprise is, though I do not see what, in this answer, is to change the case, from its position as originally presented, for the allowance of the rule to show cause, I am willing to accede to so reasonable a request, as counsel have made

for an adjournment over, until next Wednesday, *that they may read this answer and consider it; because, although I have failed to see in it, by the reading, and counsel seem to have failed to see, in it, anything, that is new or unexpected, or that should change the position of the case (or at least have not pointed it out to me and therefore I presume have not seen it)*, it may be that, on a careful perusal of this answer, counsel may see something different in it. And one week longer cannot seriously incommode the defendants. The rule, as it now exists, if I merely adjourn the case, will prevent the execution or consummation of the lease. It may be important to the corporations, defendants, if they are to execute the lease, that it be done soon. If it is so beneficial, as they set out in their answer to the stockholders, the sooner it is done, probably the better, and I am unwilling to delay them, in what they consider—whether I consider it so or not—a matter important to have finished; but I think the week's delay asked by counsel, is not unreasonable. If the time, therefore, will suit the counsel on the other side, or at least, is not incompatible with their engagements, I will adjourn the cause till next Wednesday.” There are two propositions, on which the defendants mainly rely to sustain their denial of the equity of the bill. They say, “first, *the works* of the Pennsylvania Railroad Company, on and before March 17th, 1870, formed continuous and connected lines, with *the works*, of ‘the United Railroad and Canal Companies of New Jersey,’ and, the Pennsylvania Railroad Company was, at the same period of time, ‘identified in interest, with the United Railroad and Canal Companies of New Jersey;’ and, second, it is highly improbable, that the United Railroad and Canal Companies of New Jersey

will hereafter earn and divide, among their respective stockholders, ten per cent. per annum.” These two propositions will be consecutively and briefly examined.

First.—“The *works* of the Pennsylvania Railroad Company, on or before March 17th, 1870, formed continuous and connected lines, with the *works*, of the United Railroad and Canal Companies of New Jersey, and the Pennsylvania Railroad Company was, at the same period of time, identified in interest, with the United Railroad and Canal Companies of New Jersey.” The complainants can, with perfect safety, admit this proposition as sound in law and sustained in fact, and yet claim *superabundant equity* in their bill, as has been hereinbefore demonstrated in the preceding argument. An admission of this proposition leaves untouched, among many other equities exhibited in the complainants’ bill, the conclusive objections to the proposed lease, that the act of March 17th, 1870, *has never been accepted*; that said lease is not “*an arrangement, for connection or consolidation of business* ;” that said act is *unconstitutional*, in authorizing the taking of private property *for a private use*, and if, for a public use, then, in providing for the payment of “just compensation,” *after*, instead of, *before* such taking; that the Pennsylvania Railroad Company is a *foreign* corporation and cannot become a lessee of the franchises and public works of the railroad and canal corporations of New Jersey. The counsel for the complainants believe, that any one of the aforementioned equities is fatal to the proposed lease, and, that they, one and all, cannot be denied by the defendants in this proceeding. Feeling satisfied, however, that the proposition now under review is erroneous, both in law and fact, the counsel of the com-

plainants deem it their duty to expose such fallacy. The defendants attempt to sustain their proposition by *legal arguments* deduced from partially-stated and irrelevant facts. Their allegations of fact are substantially, as they may be elicited from their affidavits and documentary exhibits, as follows, viz. : “ The Philadelphia and Trenton Railroad Company, on and before March 17th, 1870, was, and now is, a railroad corporation of the State of Pennsylvania; a majority of whose directors must be citizens of that State, and whose *habitation* is on the soil of that State.” “ As a corporation of the State of Pennsylvania, as early as 1834, the Philadelphia and Trenton Railroad Company *began to operate* their railroad, which terminates at Morrisville, on the westerly side of the Trenton Delaware bridge, in Bucks County, Pennsylvania.” “ The original capital of the Philadelphia and Trenton Railroad Company in 1832, was one million of dollars: it has since been increased to \$1,260,000.” “ The Philadelphia and Trenton Railroad Company, in the year 1868, became lessee, for 999 years, of the *works* of another railroad corporation, in the State of Pennsylvania, termed ‘the Connecting Railway Company,’ and, since that period, has been operating said leased railroad.” “ The said Connecting Railway, (which is about seven miles in length,) lies, between the works of the Philadelphia and Trenton Railroad Company, and those of the Pennsylvania Railroad Company, (whose railroad has its eastern terminus, in the city of Philadelphia, in the State of Pennsylvania,) and connects, in that city, with the railroad of the Philadelphia and Trenton Railroad Company, and also with the railroad of the Pennsylvania Railroad Company, (notwithstanding, a difference of gauge

between it and the Pennsylvania Railroad,) and forms, together with the respective railroads of the said Philadelphia and Trenton Railroad Company, and of the Pennsylvania Railroad Company, a connected and continuous line, between the easterly terminus of the Philadelphia and Trenton Railroad Company, (which is the westerly side of the Delaware river, at Morrisville, Bucks County, Pennsylvania,) and the western terminus of the railroad of the Pennsylvania Railroad Company, which is in the city of Pittsburg, Pennsylvania." "The railroad of the Philadelphia and Trenton Railroad Company, connects, on the westerly side of the Trenton Delaware bridge, with the railroad of said bridge company, and the railroad of the Trenton Delaware Bridge Company, (a corporation, partly, of New Jersey, and, partly, of Pennsylvania,) connects, on the easterly, or New Jersey side, of the Delaware river, with the works of the United Railroad and Canal Companies of New Jersey." "By means of such aforementioned several connections, a connected and continuous line of railroad, for the transportation of goods and passengers, exists, between New York and Pittsburg, *via* Philadelphia."

"As early as the year 1850, if not anterior thereto, the Philadelphia and Trenton Railroad Company, by articles of agreement with the Trenton Delaware Bridge Company, made arrangements for connection with the railroad of said company, and for the use of their bridge as a viaduct, on the payment of certain stipulated rates of toll." "Before March 17, 1870, the Philadelphia and Trenton Railroad Company purchased, either in its own name, or in the name of certain trustees, a majority of the shares of the capital stock of said Trenton Delaware Bridge Company; the United

Companies of New Jersey, about the same period, purchased the balance of said stock, save one share.” After the construction of the works of the Philadelphia and Trenton Railroad Company, and subsequent to the going into operation of the railroad of said company, some time in or about April 22, 1836, the Joint Companies of New Jersey (two of the present United Companies) purchased, in the names of certain trustees, a majority of the shares of the capital stock of the Philadelphia and Trenton Railroad Company, which shares, on March 17, 1870, stood, and now stand, in the names of private individuals in trust for the said United Companies of New Jersey.” “Prior to October 25, 1870, the said trustees were entitled, on a sliding scale, to about fifty votes, out of many hundred votes, in the elections of said Philadelphia and Trenton Railroad Company, and did not acquire a right of voting, according to each share of stock held by them, until October 25, 1870.” “And, on April 22, 1836, certain articles of agreement (unauthorized by any legislation) were entered into, by and between the Philadelphia and Trenton Railroad Company, of the one part, and the aforesaid Joint Companies of New Jersey, of the other part,—(the said agreement since enuring to the benefit of the United Companies of New Jersey),—to the effect of equalizing the payment of dividends of the companies, parties to said agreement, among their respective stockholders, it being expressly provided in and by said agreement ‘that the *accounts* of the several companies, parties thereto, should be kept *separate*, and that *dividends* of the clear profits of said respective companies should be made and declared *separately*, in the same manner as if said agreement had not been made.’”

From the foregoing presentation of facts, the defendants deduce a *legal inference* that *the works* of the Trenton Delaware Bridge Company are part and parcel of *the works* of the Philadelphia and Trenton Railroad Company; that *the works* of the Connecting Railway Company are part and parcel of *the works* of the Philadelphia and Trenton Railroad Company; and that *the works* of the Philadelphia and Trenton Railroad Company are part and parcel of *the works* of the United Railroad and Canal Companies of New Jersey, by reason of an equitable or beneficial interest in a majority of the shares of the capital stock of the said Philadelphia and Trenton Railroad Company, possessed by said companies. They therefore *argue* (as they think, with legal logic) that *the works of the United Railroad and Canal Companies of New Jersey, by means of the aforementioned works of the Philadelphia and Trenton Railroad Company (which they claim to own), directly connect with the works of the Pennsylvania Railroad Company at Mantua, in the city of Philadelphia, and there form, with the works of the Pennsylvania Railroad Company, "a continuous and connected line" from New York to Pittsburg.* Their proposition advances a step further; they show that there was prior to and on March 17, 1870, and that there still is, a *business connection* (in the transportation of merchandise) between the canal and railroads of the United Companies of New Jersey (by means of floats, barges and canal-boats along and across the Delaware River, from Bordentown and Camden, in New Jersey, respectively) and the railroad of the Pennsylvania Railroad Company, in the city of Philadelphia. Their *legal logic* infers, from such *business connection*, that *the works* of the Pennsylvania Railroad Company formed,

prior to and on March 17, 1870, "a continuous and connected *line*," with *the works* of the United Companies of New Jersey; which connection and continuity are "the connection and continuity" mentioned in the act of March 17, 1870.

The simple but conclusive reply to such *an argument* is that the Act of March 17, 1870, contemplates a *direct* and actual (not constructive) connection and continuity. It does not say "whose works, together with, or by the aid of, the works of *intervening* companies," or "whose works, together with *intervening* works," "shall form continuous and connected lines with the works of the United Railroad and Canal Companies of New Jersey." The statute does not employ any such or similar words or terms whatever. Such, however, is the language which ought to be employed, and which is employed in all similar legislation, for constituting a connection of railroads, where other railroads *intervene*, in the State of Pennsylvania, as appears from the documentary evidence furnished by the defendants. Such language is clear, unambiguous and intelligible, and would undoubtedly have been used in the said act, if it had been the intent of the act, to authorize the proposed lease to the Pennsylvania Railroad Company. Such *constructive connection* as is contended for by the defendants is too unreal to accomplish the purpose contemplated by them. Such construction is not even ingenious because it is neither plausible nor probable. The works are the works of corporations.

In no *legal* sense are the individual members of a corporation the *owners* of its works. *Regina vs. Arnaud*, 9 Q. B., 806, cited in *Ang. & Am. on Corp.*, 9th ed., sec. 109, pp. 84, 85. In order to place on the

Pennsylvania Railroad Company the other statutory “ear-mark” of being “identified in interest with the United Railroad and Canal Companies of New Jersey,” the defendants in this proceeding adduce in evidence the agreement of February 18, 1863, made between themselves, of one part, the Philadelphia and Trenton Railroad Company, of another part, and the Pennsylvania Railroad Company, of another and distinct part, and likewise exhibit a lease from the Connecting Railway Company, to the Philadelphia and Trenton Railroad Company, dated January 1, 1868. Although the said articles of agreement of February 18, 1863, relate exclusively to a railroad business connection in transporting merchandise and persons between New York and Pittsburg (a very inconsiderable portion of the entire business of the United Railroad and Canal Companies, which mainly is a local and way business between the great cities of New York and Philadelphia, and between New York and Washington by way of Philadelphia), and expressly disclaim the formation of any copartnership, even in respect to such inconsiderable, unprofitable and partial railroad business, yet constrained by the manifest poverty and necessity of their defence, the defendants earnestly contend that such railroad business constitutes “a sameness and identity of corporate interest,” *i. e.*, a sameness of entire business, a sameness of corporate franchises, of works, stock, right to dividends, and of public and private obligations, liabilities and indebtedness. “*Credat Judæus Apella!*” The lease by the Connecting Railway Company to the Philadelphia and Trenton Railroad Company, simply institutes the relation of lessor and lessee between those two companies. The lease

itself does not pretend to and cannot create any "identity of interest," between parties other than those who are parties to the indenture, respectively, as lessor and lessee. The said United Railroad and Canal Companies are not parties to said lease. Community of traffic in one of many branches of corporate traffic, does not create an identity of corporate franchises, property and business, or an identity of corporate interest. One railway company associating, allying and connecting itself with another in regard to traffic in which they have a common interest, does not amount to an amalgamation between the two companies. *Shrewsbury & B. R. vs. Stour Valley & London & N. W. R.*, 21 Eng. L. & Eq., 628; 2 DeG., M., & G. 866; *Midland G. W. R. of Ireland vs. Leech*, 28 Eng. L. & Eq. 17, cited in 2 Redf. on Law of Railways, 3d ed., ch. 38, sec. 253, pl. 1, p. 659. "Amalgamation" signifies "blending," "mingling," "so as to form a single compound;" to create a common corporate interest, a sameness or identity of corporate interest.

Second.—"It is highly improbable that the United Railroad and Canal Companies of New Jersey will hereafter earn and divide, among their respective stockholders, ten per cent. per annum. To sustain this proposition, the defendants advance certain unexplained and partial tabular statements not containing any full statistics of the business or financial condition of the United Companies. It seems to be highly probable that a grave error has been committed in the preparation of these tables, in this particular, that net earnings are set down as earnings or profits ascertained, *before* the payment of interest on bonded indebtedness. As interest on a bonded debt, payable semi-annually, is

part of the current expense of the company, and is statedly met out of cash or current receipts, it would seem to be regular and correct to strike a balance between current receipts and expenditures, so as to ascertain net earnings or profits applicable to dividends among stockholders, payable in cash, *after* payment of interest on funded indebtedness, instead of *before* such payment. The inference, therefore, is reasonable, that the auditor of the corporations answering in this case has probably committed, in his affidavit, the mistake of applying the current receipts of the companies, a second time, to the liquidation of the same interest on their funded indebtedness, and that, therefore, the tabular statements before referred to are erroneous. Be that as it may, for the supposition cannot, in this hearing, be sifted by means of a cross-examination, or any adduction of contradictory testimony, the tabular statements referred to warrant nothing more than a hypothetical argument. They prove, however, great past prosperity, for a long series of years, in the earnings and dividends of the United Canal and Railroad Companies of New Jersey, and may be dismissed, in respect to their supposed verification of predictions of dire disaster and failure, with the remark that it is not given to mortals to know, with anything approaching to certainty, the veiled future.

“ What future good or ill betides,
He gives not thee to *know* ;
He gives thee *Hope*, to be thy blessing now.”

The complainants and their fellow-stockholders are free to *hope* for better things in the future. They must “accept the situation” of a recent three per cent. semi-annual dividend, and *feast on the memories* of an average

of dividends, during twenty-four years, of fifteen per cent. per annum, *hoping* that what has been may occur again, under more auspicious circumstances. They are old and apposite sayings which tell us, "That the bird is unclean which fouls its own nest;" "that no man should be permitted to stultify or turpify himself," and it is neither pleasant nor profitable, to encourage, even by passing notice, attempts to depreciate the value of twenty millions of stock, in which the complainants and their fellow-stockholders have large pecuniary interests. The complainants *hope* for better things, in the future, than semi-annual dividends of three per cent., or any realization of the mischievous forebodings of the answer. It will comfort the complainants and their fellow-stockholders, and enable them to resist the depressing effects of such croakings and idle auguries, to notice that their stock still holds its own, as a reliable ten per cent. per annum stock, in the stock market, has experienced no panic, and is firmly held, notwithstanding the answer of the defendants, and its dark depiction of the gloomy future and failing fortunes of the once rich and prosperous United Railroad and Canal Companies of New Jersey. It is likewise a refreshing and sustaining reflection, that the money-making and sagacious Pennsylvania Railroad Company is *eager* to assume the payment, for 999 years, of ten per cent. on this same impoverished and unproductive stock and business, and to take the risk of "the lamentations" of the defendants' answer. As regards *the effect* of the defendants' denial of the equity of the bill, on the ground of "inconvenience," or, by way of argument, "*ab inconvenienti*," something has been said hereinbefore concerning the propriety of such an appeal to the Chancellor's

mind, in a matter of clear equity ; but, it may be well to remark, that while the charges of the bill, that the works and property of the companies respectively are worth, at least, \$50,000,000, and give good promise of future dividends (corresponding with the average of twenty-four years of the past) of fifteen per cent. per annum, are sustained by direct and competent affidavits, the denial of such charges so verified, is unsustained by a single direct, unequivocal, and unambiguous affidavit. The counsel who will follow in behalf of the complainants, and who will close the argument, may possibly see fit to notice, *more particularly*, the aforementioned leading propositions of the answer, on which the defendants mainly rely.

With deference to the court : The intent of the foregoing argument (which is somewhat elaborate, for the reason that some indistinctness of judicial vision, in respect to the ability of railroad or canal corporations, to alienate, assign, or “ consolidate ” their franchises, powers, properties, and business, with or without legislative authorization, has been heretofore caused by corporate artifice, which it is proper to remove), is, in brief, to satisfy the court, that the leading franchises granted by the legislature of New Jersey to the several canal and railroad companies commonly called “ the United Canal and Railway Companies of New Jersey ” (who are named as defendants in the present proceeding in equity), severally or collectively, are eminently public franchises and powers, concerning a “ public use,” which enable said companies “ to construct, complete, maintain, and operate ” (as common carriers) the respective railroads and canals entrusted to them as public agents employed in an administration of an important

department of the public service of the State of New Jersey, for the uses of the people of the State of New Jersey; that such public franchises and powers are, in their nature, inalienable, "by means of agreement, contract, lease, or otherwise," by said companies, severally or collectively, unless they have been specially and clearly authorized so to alienate, for some "public use" of the State of New Jersey, by the legislature of New Jersey, in conformity with the requirements of the Constitution of New Jersey and of the United States respectively; that the legislature of New Jersey cannot constitutionally authorize any such alienation to a *foreign* railway corporation, which, by its very nature and structure, is unsuited, unfitted, and without any capacity, to control, manage, or administer "the public highways" of the State of New Jersey, or any of them; that the legislature of New Jersey have not, in any way or manner whatever, either generally or specially, authorized or empowered the said companies, or either of them, to alienate, by agreement, contract, lease, or otherwise, the said railroad and canal franchises and properties, with their appurtenances, or either or any of them, to the Pennsylvania Railroad Company, or to any other corporation, domestic or foreign; and that, consequently, the proposed lease (being such alienation for 999 years) is in violation of the laws and Constitution of the State of New Jersey; and for that reason, and for the additional reason that said lease is illusory, unconscionable, and inequitable, its execution will be to the irreparable injury of the complainants and their associate stockholders, unless said corporations shall be prevented by an injunction of this Court affording an adequate remedy in the premises.

If the aforementioned intent shall have been accomplished by the foregoing argument, the engulfing tidal wave of railroad centralization, which threatens the internal improvements of New Jersey, may be so broken and impeded as to spend its blighting and impoverishing forces upon our soils, and leave the fair fields of New Jersey to be irrigated and enriched by their proper streams of domestic improvement regulated, in their fertilizing action, by her own public policy, as heretofore. If this happy consequence shall be the result of the present legal discussion, not only the people of New Jersey, but also the people of the United States, will have cause of exceeding gratitude to this Court (as the favored instrumentality of a protecting Providence) for having faithfully and successfully defended the State and Federal Constitutions, respectively, against the insidious innovations and daring usurpations *of corporate lust for power*.

May 5, 1885.—The Governor of New Jersey has signed the bill preventing railroad companies from leasing their roads or franchises until they have obtained the consent of the legislature. Thus New Jersey, after an interval of fifteen years, in her organic capacity, has indorsed the justice of Mr. Bradford's argument.

H. E. D.

LETTER AND OPINION
OF HON. CONWAY ROBINSON, ESQ.*

HON. VINCENT L. BRADFORD, LL.D., D.C.L.

Dear Sir :—In a letter of the 31st, from Philadelphia, my brother desired me to send you any suggestion which it might be agreeable to me to make on the subject of your brief. In consequence of that letter I have read the argument and given some thought to the subject. Although I have not the record, and no other argument than yours before me, and cannot be expected to be at once familiar with the case in its details, yet from your argument I have an impression of the leading points. Your citations of authorities are so numerous that it can scarcely be worth while for me to add to them. If the matter shall strike the Chancellor's mind as it strikes mine, *the injunction will be continued.*

I remain, respectfully yours,

CON. ROBINSON.

The case may be viewed : I. *Upon the supposition that all the companies were incorporated by New Jersey, and irrespective of the legislation of 1870.* 1. *As to the illegality of the agreement.* Both in England and the United States courts held that railway companies should be kept strictly within their powers. Lord Cranworth thought the case before him in 1851, in his opinion,

* This remarkable endorsement of Mr. Bradford's argument is by one of the ablest railway lawyers in the United States. It is selected from several others of a like tenor. H. E. D.

was "just the same thing, practically, as if they had leased the line to the two other companies; because what they say is not that the Midland and the North-western Companies are to run their trains upon the line, but that the whole concern, without incumbrance, when completed, is to be worked by the London and North-western and Midland Companies, who shall have perfect control, and exercise all the rights of the Oxford, Worcester, and Wolverhampton Company." He considered that by this agreement the Oxford, Worcester, and Wolverhampton Company were "delegating the functions which the legislature has given them to other parties, which they have no possible right to do." He observed that "for the security of the public, there are a vast quantity of duties imposed on that company. They are bound to have proper station-masters and policemen, and to have proper people to attend to the signals, and a variety of other duties are imposed on them in which the public is concerned; and although it was said that there was nothing in the agreement to prevent the construction that the Oxford, Worcester, and Wolverhampton Company are still to do all these things, and that the meaning of the contract is that the North-western and the Midland Companies are merely to run their carriages on the railway;" yet Lord Cranworth thought it "idle to suppose that that was the meaning,"—the act requiring a great many things to be done by this incorporated company, which the company had agreed should be done, not by themselves, but by the North-western and the Midland Companies, the agreement was, therefore, in Lord Cranworth's opinion, illegal.

There was about the same time a case before Sir

George Turner, in which he regarded the agreement as amounting to an entire delegation of all the powers conferred upon the East Anglican Company,—a case in which he said: “Although in form it is declared that the instrument shall not operate as a lease, or agreement for a lease, it amounts in substance either to one or the other.” He said: “It is framed in total disregard of the obligations and duties which attach upon these companies; and it is an attempt to carry into effect, without the intervention of parliament, what cannot lawfully be done except by parliament in the exercise of its discretion with reference to the interests of the public.” The case before Sir J. Parker, vice-chancellor, in May, 1852, is also pertinent. He said: “The company who work the other railway are to have the use of the property and plant of the other, and that must mean the exclusive use, as between themselves and the Birkenhead Railway Company; because it is clear, that if the London and North-western Railway Company are to work it under this agreement, the Birkenhead Company cannot work it, and they must part with the use of their property and plant, with the exception of some land and buildings, for the purpose of working it, to the other railway company.” He thought “that it is impossible that that can be carried out, without delegation or transfer to the London and North-western Railway Company of some, at least, of the duties and powers which are given exclusively to the Birkenhead Company by their acts of parliament.” It appeared to him,—although the Birkenhead Company are not at all bound to be carriers,—that what is called working the line is a duty that is imposed by act of parliament upon them; and it appeared to him,

therefore, that "the agreement is that they shall part with certain statutory powers which they have no power to part with; and, moreover, that they are to *part with them to a body who, by their constitution, cannot accept them*; for the London and North-western Railway Company, as" (he understood) "its constitution and objects, cannot, without further authority from parliament, undertake the working of another line of railway." He could not distinguish the agreement before him for an agreement for a lease, and it was not contended that a lease was within the powers conferred by parliament. In England, "so far as the power of the Court of Chancery extends, it has unalterably decided that companies possessed of funds for objects which are distinctly defined by act of parliament, cannot be allowed to apply them to any other purpose whatever, however beneficial or advantageous it may appear, either to the company or to individual members of the company." Lord Chancellor Cranworth, in 1856-57, observing on the facts then before the House, that they "forcibly illustrate the expediency of the rule which holds an incorporated company to a strict compliance with the terms of the act of incorporation in the application of its funds."

2. *As to the rights of each individual stockholder and the proper parties plaintiffs*, the view of Sir James Wigram, in 1849, was brief, simple, and striking. Speaking of "£100,000, raised under the Hadleigh act," he said: "No majority of the shareholders, however large, could sanction the misapplication of this portion of the capital. A single dissenting voice would frustrate the wishes of the majority. Indeed, in strictness, even unanimity would not make the act lawful." In the case before Sir J. Parker, in 1852, he regarded the

agreement as “savoring of illegality, which any shareholder in the Birkenhead Company has a right to come to the court to restrain.” He saw nothing to prevent Mr. Winch, “a shareholder in this company, from coming and seeking to restrain an infringement of the constitution of this company as it is established by law.” More recently, in the House of Lords, in 1856–57, it was distinctly laid down that “any shareholder in a railway company may, by legal proceedings, prevent its directors from applying its funds to a purpose not authorized by the act of incorporation.” According to Sir W. Page Wood, vice-chancellor, in 1868, now Lord Chancellor Hatherley, “the authorities have now completely settled that, whatever may be the portion of the shareholders, every shareholder is supposed to have a common interest with the plaintiff in varying any arrangement that may have been entered into *ultra vires*.” 3. *As to the power to restrain by injunction.* The restraining power of the Court of Chancery was exercised in 1850. Considering the contract illegal, the court was “clearly of opinion, both on principle and authority, that it was the province of this court to prevent the contract from being carried into effect, because, on the principle that has been so often laid down, this court will not tolerate that parties having the enormous powers which railway companies obtain should apply one farthing of their funds in a way which differs in the slightest degree from that in which the legislature has provided that they shall be applied. The court restrained the parties from carrying into execution that which, if it did not restrain them, might “cause what we call, for want of a better expression, irreparable injury,—that is, the expenditure of money

which it will be impossible, perhaps, ever to get back again." To this injunction they submitted without availing themselves of the permission given them to try the validity of the agreement at law. In the case before Sir J. Parker, in 1852, he thought the plaintiff entitled to an injunction "to restrain the Birkenhead Company from making over to the London and North-western Railway Company the Birkenhead Company's lines of railway, plant or property, or any part or parts thereof, on the footing of the agreement, and that the London and North-western Railway Company may, in like manner, be restrained from taking possession of the said lines of railway, plant or property, or any part thereof, on the footing of the agreement." In the same year, Sir George Turner awarded an injunction in *Simpson vs. Denison*, 13 ib., 363. In 1868, in a case already mentioned, it was considered that the plaintiff was entitled to a declaration "that the resolutions were not within the power of a general or any other meeting of the corporation," and "are not binding on the plaintiff or any dissentient member of the corporation," and to an injunction to restrain "carrying the proposed amalgamation into effect."

II. *With reference to the fact that some of the companies have never been incorporated by New Jersey, and showing how the matter stands under the legislation of 1870.*

With respect to a corporation created, not by New Jersey, but only by Pennsylvania, the language of the Supreme Court of the United States is that "The legal entity or person which exists by force of law, can have no existence beyond the limits of the state or sovereignty which brings it into life and endows it with its faculties and powers." When, then, the attempt is

made to have a line of railroad in New Jersey put under the control of and worked by a company which can have no existence in New Jersey, it is an attempt to do that which, upon sound legal principles, is a wild and impracticable scheme, which cannot conduce to any good result, and which, at the instance of any stockholders or stockholder interested, ought to be restrained. If, in the opinion of the legislature of New Jersey, railroads in New Jersey can be worked by the Pennsylvania Railroad Company better than by such companies as New Jersey has heretofore incorporated, then it is for the legislature to say so in a legal way, in plain and explicit language, incapable of being misunderstood or misapplied; and the legal way would be for New Jersey to pass an act incorporating the Pennsylvania Railroad Company and prescribing its powers and duties, and providing just compensation for any private property which, under such act, may be taken for public use. It is very clear that the right of a corporation created by one State to hold lands in another, must depend upon the permission, either express or implied, of that other State. And whatever may be the comity in the case of a banking or insurance company, it is very plain that a railroad company incorporated by one State is not authorized by comity to make or work a railroad in another State; it can do neither the one nor the other without appropriate legislation of that other State enacted for the purpose. Without stopping to inquire whether the statutes of Pennsylvania should be construed as authorizing companies incorporated by that State to act beyond its limits in the manner contemplated (for without such construction the acts contem-

plated beyond those limits would be void), it seems proper, in respect to the act of New Jersey of the 17th of March, 1870, to apply the settled rule of construction adopted by the Supreme Court of the United States,—“that public grants are to be construed strictly;” that any ambiguity in the terms of this act must operate against the corporation claiming under the ambiguous words; and that such corporation can have nothing but what is clearly given by the act. This rule of construction was distinctly placed on the ground that the interests of the community were concerned in preserving undiminished the power in question. And the principle emphatically applies here, when the pretension is set up that, by a peculiar and artful *modus operandi*, power, unprecedented and dangerous, has been granted to a company incorporated by another State,—power which, if intended by the legislature of New Jersey, they might be expected to grant in a direct way, in an act incorporating that company, and giving the power in plain and explicit language. Upon a proper construction of the act of March 17, 1870, it must be held to give power to no companies except such as before that day had been already incorporated by the State of New Jersey. Such a construction—confining the power to companies incorporated by New Jersey—seems to me to be sound, and to render it unnecessary to inquire further, whether the Pennsylvania Railroad Company is, within the meaning of the act, “identified in interest,” or whether, within its meaning, their works form with those of the “United Companies” mentioned in the act, “continuous or connected lines,” or whether the arrangements are within the meaning of the act, “for connection or

consolidation of business." This view is in accordance with the doctrine in New Jersey, in the case of *The Camden and Amboy R. R. Co. vs. Briggs*, 2 Zabriskie, 623; and it seems to render immaterial the minor point as to the operation of the proviso therein; for the leaning of the court always is so to construe an act, if it can, as to prevent its meaning being in conflict with the Constitution of the State, or the Constitution of the United States; and such conflict will be avoided by the view just taken as to the construction of the act of 1870.

CON. ROBINSON.

The Vineyard, near Washington City.

AN ADDRESS

PREPARED FOR

THE ALUMNI OF
WASHINGTON AND LEE UNIVERSITY,

TO BE DELIVERED AT THE

ANNUAL COMMENCEMENT.

AN ADDRESS*.

TO THE PRESIDENT AND GENTLEMEN OF THE TRUSTEES,
MEMBERS OF THE FACULTY AND FELLOW-STUDENTS :

I have selected for my subject the philosophic and historic truth,—that science is essentially influenced by religious belief. I can consider this topic in a partial and imperfect manner only, within the compass of a single discourse; but a useful purpose will have been accomplished if I succeed in prompting some of my audience to further reflection in regard to it.

I shall best treat the theme by viewing it, *first, in the light of a philosophic, and secondly, in that of an historic truth.*

1st. *It is a philosophic verity that science is essentially influenced by religious belief.* Man is a composite being. As a descendant of Adam there is united in his merely human nature a soul, spirit and body, or, as they are termed in the original Greek of the New Testament, *τὸ πνεῦμα καὶ ἡ ψυχὴ καὶ τὸ σῶμα*. The apostle Paul recognized this trinity of nature when, in his first epistle to the Thessalonians (1 Thess. 5 c., 23v.) he writes : “ I pray God your whole spirit, and soul, and body be “preserved blameless unto the coming of our Lord Jesus “Christ.” The same truth is impliedly taught in very early scripture. In the first chapter of the book of Genesis it is written, “The Lord God formed man of “the dust of the earth, and breathed into his nostrils

*Dr. Bradford was prevented by a severe attack of illness from fulfilling his appointment, and this address is now selected from several others for publication. It was written after he had passed three-score and ten. H. E. D.

“the breath of life, and man became a living soul.” And again, “God said, Let us make man in our own image, “after our likeness.” “So God created man in his “own image; in the image of God created he him.”

The inspired word of God also fully reveals the fact of the trinity in unity of God. In pursuance of this analogy it may be safely affirmed that man’s soul is the seat of his moral emotions and affections, and is immortal; that man’s spirit is the indissoluble motive force of his soul, and that it possesses faculties suited to personal existence, after its separation by death from its earthly casement; that man’s body is his earthly tabernacle, and is endued with faculties fitted to the purposes of terrestrial existence; that the intellect is a faculty influenced and exerted according to the respective requirements of volition, each intellect acting in its distinct and allotted sphere. “For they that are “after the flesh do mind the things of the flesh, but “they that are after the spirit, the things of the “spirit.” Hence belief is the result of an intellectual process from the testimony of the senses, aided by the sensibilities and will, which all spiritual beings can exercise, for “devils believe and tremble.” While faith or confidence in God as revealed in Christ is the result of a process, as we are taught by revelation, of the intellect, sensibilities and will in the new creature in Christ Jesus, “born of God,” and which “cannot sin,” given to the believer by the regeneration of the Holy Ghost, when he, by a spiritual and new birth, is made a partaker of the nature of Christ, acquires “a life hid with Christ in God,” and is made “one with Christ.” Religious faith is, in such peculiar and appropriate sense, “the gift of God,” an expression of the

regenerate nature, primarily, eventually and all the time, through sanctification, of the entire man for "such faith works by love, purifies the heart, and overcomes the world." When thus exerted, evangelical faith is not merely an intellectual perception, but is the loving trust and confidence of the believer in the promises by God of salvation and ultimate glorification, through Christ his spiritual head. Sanctification is an assimilating process, whereby the simple Adamic nature is completely purified and brought into entire accord, sympathy and harmony, through the Holy Ghost operating upon the soul, spirit and body of the natural man. It is usually a progressive work, consummated by the dissolution of the body, and its resurrection as a spiritual and glorified body. By such ultimate sanctification and glorification, the dual nature, borne by the believer on earth, is made wholly "one in Christ," so that the redeemed of the human race are perfectly fitted for the heavenly state, for eternal felicity, and are made "kings and priests unto God," and "live and reign with Christ forever." Such scriptural views of the state of the true believer, before his complete sanctification, as bearing a dual nature, namely: as a child of Adam, inheriting a wholly depraved nature, and as "born of God," possessed of a nature which "cannot sin," and, in respect to each of his natures, in one being, is not contradicted by human consciousness and reason. From such premises it follows that man, before regeneration, as respects his intellect, is so organized that he can understand moral truth, and, after regeneration, is so endowed that he can properly realize, love and trust religious truth, while at the same time, by the aid of his bodily senses, he can make

scientific acquaintance with the moral and material works of God, in order that he may "grow in grace and in the knowledge" of his Creator and Redeemer.

Our being has been often termed "a mystery;" without a knowledge of its purpose, it is undoubtedly a mystery. The man who is ignorant of any great religious and moral purpose for his existence, is certainly in the dark. He who thinks that the shadows of death will soon encompass him forever, and that annihilation will, in a brief period, be his hopeless end, must indeed be an inexplicable mystery to himself. All the light of his science is but the glimmering of a weak taper soon to be extinguished forever. His animal wants supplied, his sensual appetites gratified, for a few fleeting and dimly remembered years, and the whole purpose of being is accomplished for him. The domestic and social virtues and every moral and religious emotion and sentiment, of which his soul is capable, is wasteful extravagance, a copious overflowing of the waters of an inexhaustible fountain, upon a barren and sterile soil. They beautify and enrich nothing. The dark, dreary and unknown abyss of nothingness will quickly swallow them up. He sustains no relations, of any moral and religious import to himself or others. Oblivion will speedily cover all with its dark pall. The wave of ocean, which is spent upon the shore, is not more evanescent or devoid of moral and religious meaning, than is his existence. Life, to him, is a flashing and a sound of material motion, which is hardly seen or heard, before it is gone forever. But, aside from the contradiction given, by self-consciousness and divine revelation, to such a view of human existence, such is not the teaching of

truly scientific philosophy. If much is not to be learned from individual experience, more is to be learned from the collected experience of the race, as preserved in its annals, touching the so-called mystery of human existence. If the action of a single life, or even of a generation, be not adequate to its explanation, the records of many generations suffice to furnish some moral and religious idea of man, if he be indeed a reality, and not, as some theories of rationalism assert, an illusion. That the race possesses annals, a perpetual record transmitted from age to age, and from generation to generation, of the events and attainments of human life, is a strong proof of the moral and religious character of human action, and of the immortality of man. Individual life may not be enough developed, in the short space allotted to it in time, to evince its immortal destiny; some evidence thereof, however inconclusive, is furnished, by successive developments of the human intellect, through many generations and ages, and a more adequate conception of the ever-during and increasing vigor of the immortal principle of plastic life within us, is obtained, by a consideration of the mighty intellectual achievements and attainments of our race, during the long succession of ages, whose continued action is depicted in the world's annals. These annals demonstrate that science is progressive, that generation after generation has succeeded to it, as an inheritance received, from the remotest antiquity, and increased by the labors of illustrious progenitors. The action of successive generations of men, in reference to science, thus illustrates the action of a single man, if existent, during the same space of time, under like circumstances. It is, in a

sense, the action of perpetuated man. It is an action capable of indefinite progression. It has never found a limit to its growth. It cannot; it is immortal. This, then, is human existence, to be and never to cease to be; to know, and never to cease to know. But this is attended with certain moral and religious relations and consequences. Intellects are associated in their never-ending career. The annals of time furnish a memoir of joint and individual action. Influence is exerted, and influence is a relative term. Man is related to man, and affects man, in immortal action. Duties and obligations arise from that relation, and partake of its immortal nature. The discharge of such duties and obligations is an act of the moral and religious being. Duty and obligation imply accountability. This has ever been recognized in the institutions of social life, and that moral and religious accountability which is predicated of humanity, during any period of its existence, may be affirmed of the entire existence. It must accompany the action of the intellectual, moral and religious nature of man forever. Human existence is no longer "a mystery," when thus viewed. It has an import of fearful but practical meaning. It is intellectual, moral, religious, accountable and immortal.

We dwell in the midst of marvels. We possess no intuition enabling us at once to understand them. We must inquire, study and learn. It is always a slow and gradual process. Science, or a knowledge of these marvels or wonders of God in creation, providence, revelation and grace, is certainly grounded in demonstration. It is not vague hypothesis or conjecture; all science is inductive. The principal value of science consists in its bearings on moral and religious

truth. It does not consist in the extent and variety of its nomenclature. It is not an acquisition of the memory solely. It is the moral and religious use which is made of what science gathers from every sea and every land by the intellect, the will, the imagination, the reason and the affections. That moral and religious use sanctifies science. Science is then an instrumentality of the Holy Ghost, to strengthen and unite, in harmonious action, the otherwise jarring and discordant faculties of man's sinful and depraved Adamic nature, and to produce an agreement in life of all the elements of intellectual, moral and religious existence. *Such being the nature and meaning of human life, and such the moral and religious uses of science*, we can conceive that science has an important work entrusted to it by the Divine Creator. By the lights of consciousness, revelation and psychical philosophy, it has long been perceived that man's moral action is not uniform and harmonious. Discord and conflict exist among the faculties of man's moral nature in its unsanctified state. The will is often perverse and opposed to the reason, the affections are often deluded by the imagination. There is a fourfold opposition amongst these faculties. This fact is of vast moment. By accountability is estimated the evil of such distraction and confusion in moral action. A uniform standard of right moral action is known to exist, but it is rarely observed with care. It is a correct science which seeks to regain it. But the unity of the moral nature being once disturbed, none of its faculties possess the inherent power of restoring the lost concord. There is no principle of agreement among them. The reason may be convinced, but the affections see no expediency, the

will entertains no desire, the imagination takes no pleasure. Yet these faculties are the chief instrument of acquiring scientific knowledge. Of what adequate moral use then can unassisted science be in restoring the lost equilibrium of the moral nature, in establishing right and uniform moral action? It is a difficulty worthy of divine intervention *nodus dignus vindice Deo*. The truths of revealed religion, when realized and appreciated by the regenerate nature of man through the power of the renewing and sanctifying spirit of God, supply what mere science cannot furnish, a means of restoration to right and harmonious moral action. Their salutary influence is felt to the extent that they are known and loved. The pursuits of science become elevated, correct and of great moral utility, *just so far as they are influenced and guided by true religious faith*.

Religion, in a general sense, is a system of divine faith and worship. It is the sentiment of a finite in view of an infinite intelligence. It recognizes the existence of a First Cause, eternal, almighty, omniscient, and perfect in every moral attribute,

“ Whose dwelling is the light of setting suns,
And the round ocean, and the living air,
And the blue sky, and in the mind of man;
A motion and a spirit that impels
All thinking things, all subjects of all thought,
And rolls through all things.”

It seeks to know and commune with God through and by means of an acquaintance with his physical and moral laws, with the well-being attendant on an observance of these laws, and the ills which follow their transgression. It seeks to understand, and be in loving sympathy, with the Creator, as the lawgiver and bene-

factor of the universe he has made. It acknowledges the inferiority and dependence of all existence other than that of Jehovah. The object of its adoration is a Supreme Being, the Maker, Preserver and Ruler of all things. Its first great truth or axiom is "that God is the beginning and end," "the first and ultimate reason of creation." It proposes the being and attributes of God as they are revealed in his inspired Word, in the fulfilled prophecies of that Word, in his works of creation, and in his daily providence and grace as the starting-point of all thought, the commencement of all knowledge. It asserts a revelation of these truths, by God, to man as an accountable creature. The first human being must have labored under the mental necessity of commencing his career of thought with some simple and self-evident truth. The truth which his intellect first entertained must have been a great truth, as it was the basis of all the superstructure of science which he could afterwards erect. It must have been an universal truth, as it was the key to all subsequent knowledge, and the exponent, by degrees, of all the wonders of the universe. It must have been an infallible and governing truth, or else there could be no certainty in his subsequent science. I am now speaking of science in its largest sense; for every particular science is but a bough of the great tree of knowledge, which strikes the stars with its lofty top, and covers the expanse of worlds with its branches. The field of science is the universe, vast, immeasurable and apparently infinite. The universe is not a class of confused and incongruous materials; it is a system, well ordered and harmonious in all its parts. Its arrangement exhibits uniformity of plan and design, as well as infinite

skill and wisdom. It is composed of endless combinations, all of which are the subject of scientific discernment. But where begin to discern or investigate? Where shall be found the thread to guide the explorer through this wonderful labyrinth? What is the informing principle or reason of the whole? The first truth of science should furnish this light to guide and assist further investigation. Now the primary truth or axiom of religion, that God is the beginning and the end; the first and ultimate reason of creation," possesses all these requisites. It is a great, an universal, an infallible and a governing truth. The truths of science must agree with it. Such an idea is necessary. It is the only truth which is comprehensive enough for the purposes of universal science. It affords a basis broad enough for any superstructure of knowledge which can be raised. It is the germ of all which scientific investigation can ascertain in detail through the whole process of induction. It must, of course, be the governing truth of science, and, as Luther affirmed, "Faith is the heart of knowledge, and knowledge is the shield of faith." But how and whence was this elementary truth of human science obtained? It will not answer the query to say that it is taught by the wonders of creation, for a scientific conclusion is not a primary truth. Nevertheless, it has been shown that it is the elementary principle of all science, without which science could not commence its first deduction. If elementary, then this truth has been communicated, and by whom, unless by Him who is the source and origin of all truth, himself "the truth and the light." It must have been revealed to man before his fall, while he conversed with God in primitive purity and holiness, in the very com-

mencement of his intellectual and moral existence, for it was then needed. When revealed, it became to him, organized as he was to receive it, a religious, as well as a scientific truth. The fundamental axiom of religion is thus shown to be the first and controlling truth of science; consequently, it is philosophically true "that science is greatly influenced by religious faith."

But is this philosophical theory sustained by the facts of history? A reply to this question brings me to the second division of my subject, in which I propose, in a general and cursory manner, to show, second, *that it is an historic truth that science is essentially influenced by religious faith.* It is not surprising that history, "which is philosophy teaching by example," should inform us that mankind originally possessed a true and uniform religious belief, which formed, enlightened and directed their science. There exists not, in the history of human life and action through all past time, an instance of a people so degraded as not to have possessed some religious belief and some science, however erroneous, rude or degraded such belief and science may have been. We are not left to conjecture on this point. Although it would seem unphilosophical to suppose a mass of moral intellect utterly without religious belief or scientific knowledge, yet it is not necessary to resort to that argument to establish the fact that such a phenomenon has never been exhibited. The stream of traditional history flows from the fountain-head of human existence. Man is proved to be, by incontestable evidence, not the developed sea-calf of Lord Monboddo; the "selecting atom," "protoplasm," or "cellular evolution" of Darwin and

Lange; or "the mere animal" of Condorcet, gradually disciplined into reason and sentiment, and finally exalted into genius,—but from the beginning, as he now is, a creature, moral and intellectual, ennobled with the ideas of religion and science, and capable of knowing and adoring the wonderful Creator. The higher we ascend the stream of history, the closer do we find the approximation of the people and tribes who inhabit its banks to one common belief and knowledge, and that belief and science of an elevated and valuable character. Approaching very near to the primitive ages of our race, the four earliest nations were the Indian, Chinese, Egyptian and Hebrew. Their most ancient records point to the prevalence of a common religious belief, in the existence of one God, the maker of heaven and earth, the supreme object of religious faith and worship. Not far removed from the central regions of Asia, the first seats of the human family, their earliest traditions in relation to the fallen angels, the creation of man, his lapse from moral right, a general deluge, a confusion of tongues, and the dispersion of the human race, present some diversities, but many striking coincidences, which would be surprising and unaccountable, save on the supposition of an original revelation of these truths to a common ancestry.

The earliest document of man is the Pentateuch of Moses. It is several centuries older than the chronicles of Manetho and Sanchoniathon. According to the chronology of Archbishop Usher, not relatively affected, as respects this matter, by late corrections, it was written about sixteen hundred years before Christ, and about seven hundred years after the general deluge. Preserved with scrupulously religious care,

by the Hebrews, among whom it was written, and guarded, even to the least point or character, from alteration or interpolation, by that people, separated, as they were, by jealous and peculiar ceremonial observances, from admixture with other races, the Pentateuch of Moses recommended, as well, by its internal evidence, as, by its external historic proof, is, in our hands, a well-authenticated narrative of all that had previously transpired of religious interest to man. I need not here particularize the religious belief it inculcates, or vindicate its truths as divine. It is sufficient, for the present plan of thought, to claim, for the Pentateuch, the authority of the primitive historical document of our race transmitted to us in all its original purity and freshness. The most ancient of the Indian or Hindoo writings, of a mythological or semi-historic character, is "the Ramayuna." "The Ramayuna" is an epic poem, and treats of the exploits of Rama, an ancient Indian hero. Bentley, an eminent Oriental scholar, despite the assertions of the Brahmins, who date its era some millions of years back, by a series of astronomical calculations has been able to demonstrate, that it was written about nine hundred and sixty-one years before Christ. The sacred books of the Hindoos, the Puranas and Vedas, are of much later date. These writings, the Ramayuna, the Puranas and the Vedas make mention of three principal deities, Brahma, Vishnu and Siva, who compose the trimurti or triad of Hindoo mythology. In the representations they give of these divinities, their heads are all united in one figure; and this union indicates the primary energy common to all three. This primary energy is not expressed, in Hindoo mythology, by the name of

Brahma, the first person of their trinity, but by the word "Brahm," which signifies "Supreme Being," and the source from which emanated their three deities, Brahma, Vishnu and Siva. The earliest historian of China was Confucius, its great moralist and philosopher, who lived five or six hundred years before Christ. The compilations of remote traditionary history made by him, in "the I-king" and "Shi-king," recognize the existence of one Supreme Being, and foretell the future appearance of "a Great Saint in the West," at a period corresponding to the birth of Christ. It is clear that the Chinese observed a pure, simple and patriarchal worship of the true God. The early mysteries and traditions of the Egyptians derived from India, point also to a primitive religious belief in one living and true God, termed, by them, "Re," whom they worshiped, under the triple manifestation of "Athorn," "Osiris" and "Phre." The doctrine of "the metempsychosis" or transmigration of souls, entertained in common by both the Egyptians and Hindoos, is a mode of belief in the immortality of the soul, and in a Supreme Being, its maker and moral judge. The Persians, whose history occupies a transition era between the nations before mentioned and the Greeks and Romans, also originally worshiped the true God. Their early religious writings treat of "time without bounds," the Creator of "Ormuz" and "Ahriman," antagonistic spirits of good and evil. We must not conclude from their "fire worship," that, at first, the Persians made gods of the elements. Their ancient religion was eminently spiritual; the material fire and sacrifice were but the symbols of a higher power and of a more elevated adoration.

All these early nations, it is true, subsequently lapsed into idolatry. China adopted, in the first century after Christ, the degraded superstition of "Buddha." It also deified its emperor, proclaiming him "Lord of heaven and earth." In a portion of that vast empire, some centuries after the Christian era, "the grand Lama of Thibet" was endued with extensive temporal authority, and, as the high-priest or incarnation of "Buddha" or "Fo," was supposed never to die, and to be the proper object of religious veneration and worship. The Hindoos also, after a time, forgetful of the true faith, fell into an idolatrous worship of "Brahma," "Vishnu" and "Siva," the gods of creation, preservation and destruction, with a host of inferior deities. The Egyptains adopted the symbol in place of the thing signified, and substituting the blessings conferred, by the bounteous Creator, in his room, bowed down, in religious worship, before the rising and setting "sun," and "the midnight darkness," and deified the ox, the ibis and the crocodile. The Persians, originally eminently spiritual in their poetry and religion, likewise in time merged all the truth they once possessed in dark, magical incantations. Great portions of the Hebrew nation also became darkened in their religious belief ; and while yet in possession of divine revelation, many times forsook the God who had wonderfully delivered their fathers from Egyptian bondage, and knelt before the idols of the Phœnicians, the Canaanities and of other adjacent Pagan nations, in the high places and groves of "Baal" and "Moloch." But all this is referable to the corruption of human nature, and is a legitimate consequence of the fall of man from the original state of purity and innocence,

in which he was created. Man lost the moral and righteous image of his Maker by disobedience, and true religion has never since exerted an entire restraint over his evil inclinations, or fully averted his downward course, at many seasons, to the depths of idolatry or infidelity. Still, it is apparent from the very fact of an after lapse into idolatry, that the earliest people of the earth possessed, in the primitive periods of their history, a common religious belief revealed by God to their progenitors. The various forms of idolatry which succeeded, however degraded and sensual, exhibited traces of departure from an original and universal truth. They evinced the natural necessity of exercising religious belief and practising religious worship of some kind. It is, however, to be remarked that, amidst the delusion and darkness, which so soon supervened, there were constantly struggling forth, from the depths of consciousness, among these idolatrous nations, faint gleams of true religious light. It would seem as if, like the primitive granite, which is sometimes projected through the solid and rocky strata lying over it, from a depth below the unfathomed ocean, by a tremendous internal force, primeval truth covered up by vast masses of error would, by a divine energy, displace the superincumbent pressure, and appear in upper air and light. A system of philosophy would now and then arise, the product of some strong, earnest and truth-loving nature, which would exhibit portions of the original truth. Of this character was "the Yoga" philosophy of the Hindoos. The word "Yoga," in the Sanscrit tongue (the sacred tongue of India), signifies the complete union of all thought and faculty with God, by which alone the soul can be freed from

the trammels of sin. This philosophy, however, never greatly influenced the national mind; for error was too prevalent, and the delusions, of "the Sanchya," "Wyaya" and "Vedenta" systems, were most accordant with general ignorance and superstition.

The science of these ancient nations experienced a corresponding transition with their religious belief. The civilization of China has retrograded since the period when the truth of its original belief was undermined by the atheism of the rationalistic sect of "Lao-tsze," about two hundred years before Christ. The Chinese are now among the most puerile of nations. Their amazingly copious language, consisting of eighty thousand cipher signs of speech, forms no exception to this remark. That language was, in its origin, undoubtedly symbolical. The celebrated French orientalist, Abal Remuset, has shown that the boundless quantity of these written characters may be reduced to two hundred and fourteen symbols, or keys of writing, as the Chinese call them. The meaning of these two hundred and fourteen primitive characters, which are symbols of primitive thought, constitutes the subject of the most ancient of their sacred books, "The I-king," which signifies the "Book of Unity." That book teaches the doctrine of an absolute unity, as the first cause and fundamental principle of all things. It presents also many other features bearing a strong resemblance to the Mosaic revelation. The language of the Chinese is thus proved to have been formed on the model of a primitive belief, which recognized and adored the one living and true God, and was formed before their desertion of that belief. The Chinese, at this day, it is known, lay claim to a civilization just as

perfect as it now is, for an immemorial period of time. The claim is so far just, that for two thousand years science has made no progress among them, but has receded, and they may now be considered a semi-barbarous people. The same observations are historically correct when made concerning the science of ancient India, Persia and Egypt. The investigations of Sir William Jones, of Bentley and of Colebrooke, in India, and those of Champollion, Bunsen and others, in Egypt, show that the Sanscrit and Pracrit tongues of Hindostan, and the hieroglyphical characters of the ancient Coptic language of Egypt, remain just as they were at the most remote period to which their oldest traditions relate. That these ancient nations once possessed a science of an extended and valuable character cannot be questioned. But that science dates from a very remote period, approximating the primitive ages of the world. The architectural wonders of Salsetta and Elephanta, of Dendera, Luxor, Thebes and Carnac, have survived the fall of many empires, and stand, amidst a waste of ruin and change, the gray and gigantic monuments of a far distant period. Their astronomical tables, their mathematical, metaphysical, philosophical and poetic remains, are the relics of most hoary antiquity of the elder ages of the world. Their contemporaneous history has almost perished, and indeed, for the most part, they are obliged to reveal their own story. The mysteries of Isis and Osiris have vanished, but the hieroglyphical inscriptions on Egyptian pyramids and temples are breathing to the listening ear of modern science a strong corroboration of the truth proclaimed in the Hebrew Scriptures. Although some of these remains of ancient art and science are

the monuments of ages far gone in Paganism and idolatry, they all have about them the impress of one great and original truth fully known and acknowledged at a period anterior to their own day. They exhibit also such perversions of true scientific taste as would be attendant on a departure from one great original and governing religious truth. Most of the creations of Egyptian, Hindoo and Chinese art and science, after the fall of these nations into gross idolatry, partake of the character of that idolatry, in being devoid of propriety in design and purity in taste. They seem to be the works of a wild and disordered imagination, great and energetic, as might be expected, in the vigorous manhood of the race, before the corruption and sufferings of long ages of sin and shame had much impaired it, but also monstrous, grotesque and perverse in its conceptions. Whatever slight spirituality of design they possess, is found to be associated with a dim perception still affecting the national belief of the original truth of the existence of a God, and of the immortality of the soul. The contrasts exhibited by the historical and philosophical remains of these first nations of mankind also show a primary connection between religion and science. The history, philosophy and poetry of China, India and Egypt dwell upon the past, and look back upon the primeval period of innocence, peace and purity, with sad and affectionate remembrance. Their themes are the felicity enjoyed by man in the bowers of paradise, when he held converse with God, and was favored with the visitations of angels, and the freedom, simplicity, virtue and knowledge of patriarchal times. They are never prophetic. The poetry, philosophy and history

of the Hebrews, the least important, in point of territory and population, of these ancient peoples, exhibit a marked contrast in these particulars. They prove that the Hebrews were constituted by God the carriers of sacred truth to all future generations. The Hebrew Scriptures are eminently prophetic. The past is only mentioned as connected with the future hopes and destinies of the nation and the world. Often recovered from their frequent lapses into idolatry by the warnings, exhortation and judgments of the Almighty, the light of the visible Shekinah, the real emblem of the Divine presence, burned in their midst until "the true Light which lighteth every man that cometh into the world," himself appeared. Among the Hebrews there can be no question of the intimate connection which, from the commencement of their history, existed between their religion and their science. Their civil polity, their laws, their customs, their poetry and philosophy, were all of a religious character. Their art and science were also consecrated to the service of the true God.

The Greeks and Romans succeeded in chronological order the five earlier nations which have been mentioned in the great drama of human action. The Romans, for the most part, derived their religion and science from the Greeks :

*"Graecia capta ferum victorem cepit, et artes
Intulit agresti Latio."*

Such a consideration as can therefore be here given to the influence of religion over science, in Grecian history, will obviate, perhaps, the necessity of more than adverting hereafter to Roman science. The religion and science of the Greeks, during the whole period of their commanding position in history, were,

in general, grossly Pagan. They were derived from Egypt, Persia and India, when those nations were Pagan, being greatly modified and added to by the exuberant and fertile imagination of that extraordinary people. Cecrops and Cadmus are reputed to have introduced letters into Greece from Egypt, and from Phœnicia, a Persian province. Herodotus, the father of Greek geography and history, traveled into Persia, and brought from thence a knowledge of the science of that country. Pythagoras visited India, and imbibed thence the peculiar traits of his philosophical system. In fact, the commerce and scientific research of Greece visited and explored every known abode of former civilization, and the pure ore and dross of knowledge thus obtained, with singular profusion and impartiality were poured together into the glowing alembic of the national imagination, not always to be transmuted into refined gold. This strange commingling of heterogeneous materials accounts for the want of unity and agreement in their systems of religion and science. If ever a national mind was launched upon a boundless ocean of uncertainty, far from any landmark, and without compass to guide it into any haven of repose, it was the Grecian mind tossed upon the sea of endless speculation, and vexed with the conflicting systems of its numerous schools. In religion Greece "had gods many and lords many." Every river, spring and fountain had its tutelar naiad, and every woodland wild, its faun and satyr. Another common form of idolatry among the Greeks was the worship of demi-gods, or the deification of heroes, such as Bacchus, Orpheus, Hercules, Theseus, and many others. The religion of Greece was, for this reason, mainly a deification of

nature, and the only limit to their polytheism was the exhaustion of their prurient imagination. Hence the multiformity of their mythology. It was the various work of a monstrous and licentious fancy. Every Grecian poet who wrote was at liberty to employ his invention upon it, and to add to its already innumerable fables. There was no reality in their religious belief, nothing fixed or determinate. Such being the religion of Greece, let us note how it influenced its science. This is most observable in its mental and moral philosophy, as indeed the general character of science in every nation is mirrored. The Greek philosophy is inherently false and uncertain. It possesses no generally recognized system. School after school arose, contributed its quota of vague speculation, differed from those which preceded it, was divided and torn to pieces by its own variant conjectures and discordant suppositions, and failed of establishing any certainty in mental or moral knowledge. In proof of this, witness the constant mutations of theory, on the subject of the "Summum Bonum," or "the Greatest Good," the chief subject of inquiry among them! View the Eclectic, the Cyrenaic, the Cynic, the Megarean, the Sceptic, the Stoic, and the Epicurean schools, like the shifting scenes of a dramatic representation, successively appearing and disappearing! They respectively retained their hold on the national imagination, no longer than the novelty of their several hypotheses interested. When contrasted with the nobler Christian philosophy elucidated by "the Novum Organum," or Inductive Philosophy, of the great Bacon, they are pictures of human imbecility and caprice. Their systems, founded on no basis of observation or experiment, but composed of the vaguest

and wildest theories, served only to perplex the understanding, and retard the advance of sound science. Of what slight advantage to modern science have been all the boasted discoveries of the Greeks, in natural philosophy. In dynamic science, or the knowledge of mechanical forces, they appear to have furnished the most principles. But, even in this science, their knowledge, derived from earlier nations, was confined to what are now regarded as the merest elements of mechanics. They were ignorant of the law of gravity, and of those great principles of force which are displayed in the motions of the heavenly bodies, and constitute the triumph of modern science in the systems of Copernicus, Newton, Kepler, and La Place. They knew nothing of the steamboat, locomotive, printing-press, and telegraph, or of those other modern appliances of steam and electricity which are binding men together in the bonds of Christian civilization and fraternity. The great modern discoveries of the phenomena of the imponderable forces of magnetism, electricity, galvanism and caloric, with the correlation of these forces and the concomitant improvements in chemical, medical and astronomic science, were wholly unknown to them. They were entirely unacquainted with the prismatic phenomena of light and the practical uses of the telescope, the microscope, and spectroscope, in a knowledge of which, and by means of which, modern Christian science has made such wonderful acquisitions. Their mathematical, medical, therapeutical, surgical, astronomical, botanical, geological, mineralogical, zoölogical, chemical and meteorological knowledge, *how feeble* when compared with the Christian art and science of modern times. A tyro in natural science knows more, at the present

day, of the facts which constitute true science, than the hoariest sage in Greece ever knew. In the imaginative arts, it is true, ancient art excelled, and in them alone it has not been surpassed. By the imaginative arts, I mean painting, sculpture, architecture and poetry. These arts depend upon the inventive and imitative faculties. They do not necessarily involve a knowledge of moral or religious truth. It is true that they are, in a sense, conceptions of the intellect, and are indications of æsthetic perception. But it should be remembered that probably the best and purest portions of Grecian art have reached our times. How much of what was degraded and common-place existed and has perished, is matter solely of inference from the destructive effects of time upon all works of art whose superior excellence does not secure their careful preservation and perpetuation. We may, however, reasonably conclude from the admixture of the gross, the immoral and the sensual, in the "*chef d'œuvres*" we possess, that the vices of their gods and goddesses were as often as their virtues the subjects of their sculpture and painting. Their best poetry exhibits this glaring inconsistency, and it is very questionable whether, with the exception of the *Iliad* of Homer, their other poetic productions which have reached us have not been greatly overrated. The *Iliad* of Homer may indeed rank as a great epic. But it must be remembered that it is the oldest poetic monument of Greece; that it emanated from Asia Minor, and was composed in an early age not yet corrupted by the gross idolatry which succeeded. The age of Homer is fixed by the Arundelian Marbles, at nine hundred and seven years before Christ. This is very near the period,

as we have before seen, of the great Indian epic, the Ramayuna, and is embraced within the first historic era, which we have considered. It is within the expiring influence of the original religious truth of the primitive ages. Pisistratus, the tyrant of Athens, it is true, may first have collected and arranged from rhapsodical recitations, the several parts of the Iliad; but it is undoubtedly the work of Homer, at about the period I have mentioned.

While, therefore, we concede to the Greeks the possession of a great and fertile imagination, as evinced in their mythology, and in the imaginative arts, it is in vain that we look for much useful or important truth in their general science. Their religious belief very naturally influenced their intellectual pursuits. That belief was vague, degraded, sensual, and false; and such, for the most part, was the character of their science. The absurdities of their polytheism, in some instances, made their philosophical systems, if indeed they can be dignified with the name of philosophy, decidedly atheistical. Such were the tenets of the Eclectic sect founded by Xenophanes (B. C. 500); of the Sceptical, founded by Pyrrho; of the Epicurean, established by Epicurus; of the school of Megara, and of that of Leucippus and Democritus, at Abdera. Some of them held that the world was eternal; some that it was the work of chance, and formed by a fortuitous concourse of atoms; some that universal doubt was the only wisdom; and others that the actions of men were of no moral account, and the pursuit of pleasure the chief and sole end of existence. The sensualism and folly of the national idolatry also operated in another way. I have before observed that amidst all the dark-

ness of religious error into which mankind fell after their disobedience and abandonment of the first great truth of the universe, there might be occasionally observed flashings up of light, as if from a deeply implanted consciousness of truth in the human breast. Such was the case in Greece. Great and prevalent as was its spiritual darkness, there now and then arose a philosopher who sought to reform the national belief, and to dispel the ignorance of his day. Some of these mighty spirits seemed to be almost divinely inspired, considering the deep darkness in which they lived, and their own extraordinary illumination. They were men of profound thought and earnest mind, who sought for the truth in the simplest sincerity. They were clear in discerning reality from falsehood. They loved truth, when perceived, with intense sincerity, and ever struggled to declare to others the consciousness they themselves possessed. Such were Thales, Pythagoras, Socrates, and Plato. These all believed in a First Cause of all things; in his omniscience, omnipresence, self-existence, perfection, and moral government over man. Mark how their belief influenced their science! That science is acknowledged, at this day, to have been the best and purest in Greece. All that is valuable in Grecian thought is found in their writings. *Thales* was celebrated for his knowledge both in geometry and astronomy. *Pythagoras* taught the correct doctrine that the earth is a sphere, and the fixed stars the suns of other systems. *Socrates*, the wisest and most virtuous of the Greeks, exploded the polytheistical superstitions of his day, and became a martyr in the cause of truth. *Plato*,—the great Plato! what shall be said of him? He shines, even to our vision, in these distant

days, like a great sun in the firmament of philosophy.
“It was he who sought

“To unfold
What worlds and what vast regions hold
The immortal mind that hath forsook
Its mansion in this fleshly nook.”

Plato entertained a sublime idea of the Deity and his attributes. I do not say that the great truths inculcated by him and his distinguished predecessors originated with them, or were their own discovery. They merely revived a knowledge of them. So obsolete and forgotten, indeed, had they become, and so eagerly and earnestly were they apprehended by them, that they, no doubt, appeared an original conception of their own minds. They taught them with as much enthusiasm as though they had never been known before, and were their own great discovery. It is impossible for us to conceive or realize the absorbing interest they excited in these sincere believers, in an age so grossly pagan. So earnest was the longing of Socrates for fuller and more definite knowledge of these great truths, that he advised his pupil, Plato, “even to forego the usual sacrifices until a teacher should be sent from on high.” Theism is to us a common and every-day truth. To Thales, Pythagoras, Socrates, and Plato, it was uncommon and sublime. Yet they undoubtedly derived a knowledge of it from the primitive ages, through remote tradition. Thales is known to have visited Asia (B. C. 640); Pythagoras shortly afterward traveled into Egypt and India; Socrates and Plato, who were nearly cotemporaneous,—the latter the pupil of the former,—were extremely well versed in the learning of Egypt and the East. Still, as we have seen, the great truth

of theism was much obscured, and almost extinct, among the ancient nations from whom it was derived by these philosophers. They had to rescue it from a mass of fable and confused tradition. It was the action of their own strong, earnest, and truth-loving minds upon it, when first received in a feeble and glimmering state, that kindled the spark into a mighty flame, consuming with its intensity their own existence, and blazing brightly amid the Cimmerian darkness of ancient Greece. The philosophy of Plato was eminently spiritual, and falls only short of that which is declared by divine inspiration. It taught that creation—material, intellectual, and psychical—was an emanation of one Divine Mind, and that the idea of it had existed from all eternity in the First Great Cause. God was, in such sense, termed, by Plato, “*Animus Mundi*,” or “the Soul of the Universe.” Not that he believed that matter was eternal, or that an indescribable, unknowable, vague abstraction, devoid of moral character or intelligence, termed nature, usurped the throne of the supreme mind, the intelligent Creator and moral governor of the universe; but that all things proceeded from God, and were as perfect as his infinite wisdom could make them. To man in that beautiful theory, is assigned, as the informing and plastic principle of his nature, the “*O Logos*,” or the articulate word or reason of the almighty mind, that word of power which spake creation into existence. This articulate word or soul of man is placed in immediate relation to and connection with the inarticulate word, which existed in all inferior organizations as the law of their several conditions. Man is the interpreter of the creation; all things speak to him

through his own organized ability to investigate and know the power, wisdom, goodness, justice and truth of their great original. This philosophical theory, although a greatly inadequate conception of the being and character of God as a being, whose essential nature is infinite love, and of the relation of man, whose "chief end is to glorify God, that he may enjoy him forever," to his beneficent Creator, in view of the more perfect light afforded by the direct revelation of the Bible, still exhibits a striking correspondence with many of the great truths of inspiration. The religious belief of Plato rose into the spirit of prophecy, when contemplating how little he himself and the world around him knew of the character of God, in comparison with what might and ought to be known, and the necessity of a divinely inspired teacher. He predicted "that such a teacher must be pure and void of all qualifications but those of virtue alone; that a wicked world would not bear his instruction and reproof, and therefore that, within three or four years after he began to preach, he would be persecuted, imprisoned, scourged and put to death." So far as the philosophical theory of Plato in regard to God was a truth, a great and universal truth shining in the midst of Pagan darkness, it imparted an efficiency to his school, possessed by none of the other Greek schools, in the pursuit of science. The influence of the old and new Platonic schools extended beyond the age and country of their founder, far into the philosophy and science of modern Europe. The power of the Platonic philosophy, although opposed to the popular superstitions of its times, was, nevertheless, very great. If it found active opponents in five distinguished sects, the Atomic, the

Peripatetic, the Sceptic, the Stoic, and the Epicurean, it nevertheless took hold of a large portion of the Grecian mind, and flourished. As all scientific investigation was then conducted in strict subjection to the prevailing systems of philosophy, a system advocated by so distinguished a name, endued with such moral and intellectual force, must have produced a corresponding impression on general science. If anything of moral value be discovered in Grecian art and science, it may well be referred to such philosophy, and will exhibit the great influence exerted by religious truth, as well as religious error, on the pursuits of mind.

Time permits me to advert but very slightly to the character of Roman science, for the purpose of further illustrating the power of religious belief. If I have succeeded in exhibiting its influence in Greek history, the same may be predicated of the Roman; for, as respects science, they were nearly counterparts. The civilization of Rome was borrowed, as I have before observed, from that of Greece. Cicero held nearly the same views of religious truth as Pythagoras, Socrates and Plato. No one can doubt his clear belief in the immortality of the soul, the accountability of man, and the perfection of the Deity. It breathes through all his forensic and philosophical remains, especially in his delightful work, “*De Senectute*.” That splendid fragment of the fifth book of his “*De Republica*,” known as “*Scipio’s Dream*,” is a figurative exposition of man’s accountability and immortality. The genius of Cicero towered far above his age in philosophy, rhetoric and elegant science, and though flourishing only at the commencement of that era, was the brightest ornament of the Augustan age of Rome.

I have thus, for fear of trespassing on your patience, and exceeding the proper limits of an address, rapidly and imperfectly traced, in the history of the most prominent nations of mankind prior to the Christian era, the connection between religion and science, and the influence of the former upon the latter. With the birth of Christ commences what is commonly called modern history, because the publication of his gospel produced a marked effect upon mankind, and distinctly instituted an historic period, pregnant with the most momentous results to the civilization and happiness of the human race. A still wider field of illustration of my subject here opens upon me. But it would fill volumes to occupy it. For all the purposes of an argument deduced from history, a consideration of any considerable portion of human experience, such as is contained within the period which I have hastily traversed, is sufficient, if such examination furnishes a corroboration of the position I have assumed. What is morally true in one age of the world, or one period of human existence, is true in every age and period, when the same subject is under consideration. It is enough for the present argument to observe that modern history, on this point, coincides with ancient history, and evinces, that wherever heathenism, Paganism, idolatry or atheism in any form has prevailed, there is an absence of correct science, in its proper meaning, and the presence of semi-barbarous or savage life. Rude force alone governs, and the virtues, rights and charities of Christian civilization are but little regarded. Civilization has, in the history of our race, unfortunately ever been a term of comparative signification. It has always, in point of fact, had relation to a greater or

less degree of human improvement. It has marked a comparative condition of society. It has never attained a positive meaning. Yet it does express a substantive idea. I am no advocate of the so-called perfectibility of the merely human or Adamic nature in the sense in which the socialism of Robert Owen and Fanny Wright employed it. Neither do I believe in it, in a rationalistic sense, as opposed to religious truth and faith. But I do conceive that society is capable, under the influences of Christian truth, faith and love (gifts and graces of God's Holy Spirit enlightening, guarding and sanctifying the pursuits of science and the labors of art), of a moral regeneration which shall restore harmony of moral action, and confer the highest happiness and prosperity on mankind. I have used the words "moral regeneration" as best expressive of genuine human civilization. It implies moral degeneracy, and a recovery to an existing standard of moral right. This seems to be the great and entire problem of humanity. Science has ever been employed in its solution. An error has been committed in deeming unassisted science, without the aid of true religion, competent to the task of solution. Secondary causes have been employed in the work, instead of a primary agency. Science is the hand-maid of religious faith, and not its sister. True religious faith is peerless. It can have no rival in its sovereignty. It must itself govern supremely in effecting complete civilization; and science, to be of any moral utility, must act in strict subordination to it. No scientific deduction can ever affect religious truth which originates in a higher sphere than that of material observation, and has its life and strength in the

revelations and communications of the Holy Ghost. By religious truth I do not mean the teachings of superstition, priestcraft or absolutism of any kind, but I intend the first and great truths of the inspired Scriptures of the Old and New Testaments received and realized, under the enlightenment of God's Holy Spirit, by the psychical, spiritual and physical nature of man, and a cultivation in reference to those highest truths, of all the emotions, sentiment, thoughts and purposes of our race. The history of modern civilization, however crude and imperfect that civilization has been and now is, measurably illustrates these views, and attests their correctness, even when that history is partially and briefly considered. Barbaric irruption has often overwhelmed nations possessing civilization to a very appreciable extent, but its approach has always been heralded by national corruption and depravity. When, however, true religious faith has not been wholly extinct, but has only lain buried beneath superincumbent error, and after a season has revived among such conquered nations, it has subdued the barbarian conqueror and civilized him to the extent of its revival. The Goths and Visi-Goths, the Huns and Vandals, the Saxons, the Danes, the Normans, the great Sarmatian, Scythian and Scandinavian tribes had become barbarous. The whole Roman empire, including the British Isles, lay exposed to their invasion, in consequence of its weakness, caused by a corruption of its religious belief. Error and superstition had cankerously eaten out the life of its civilization,—nothing but the empty name of Roman empire remained. Its former vigor was gone, yet note how whole nations of its barbaric invaders became christianized, and, under the guidance of re-

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ligious faith, commenced anew the career of civilization. Among the conquered the influence of Christianity had been paralyzed by an admixture of Pagan superstition, and its light had been dimmed by the mists of falsehood. The wild and sincere gaze of the conquerors, however, caught the few rays of divine truth which were still emitted. That gaze, directed and strengthened by God's Spirit, penetrated the mists of error, discerned the true light, and worshiped before it. By patient and persevering struggles with still mighty falsehood, fresh civilization advanced hand in hand with the expansion of Christianity, and regained more than its former place in the old Roman empire.

The Mahometan nations form no exception to this remark. The truth that was proclaimed by Mahomet, "that there is but one God," was also accompanied by a great falsehood: "That Mahomet is his prophet." So long as the truth predominated, the people who received it advanced in prosperity, refinement and civilization, and founded the splendid Arabian Caliphates of Bagdad and Cordova. It vanquished the gross idolatry of the nations among whom it was introduced, and so far blessed them with the light of science. But when in the course of a short period after the death of Mahomet the falsehood of the system overcame the truth which was in it, and the essence of that religion was the falsehood, "that Mahomet is the prophet of God, and his Koran the supreme revelation of the divine will," it became a religion of the sword and of savage violence; consequently, it lost its power to humanize and refine. At this day the Mahometan nations are semi-barbarous, and likely soon to succumb beneath the growing power of more civilized and

Christian countries. Mahomet began his career as a false prophet in the year A. D. 606, and during the period of the struggle of the effete civilization of the Roman Empire with its barbaric conquerors, the fresh civilization (based on the expansion of Christianity), as the result of that conflict in a brief period, retrograded into an era of military force known as "the feudal system," under the enervating influence of hierarchical domination and superstitious observance. This period was that of the Crusades, and is usually termed, in modern history, "the middle or dark ages." It endured for several centuries. Its gloom began to be dispelled by the recovery of the Roman pandects, at Amalfi, in 1137, by the revival of classic learning, and subsequently by the acquisitions of the mariner's compass and of the art of printing; all of which marked a transition period. The translation and printing of the Holy Scriptures in the vernacular gave them wide diffusion and extensively disseminated inspired truth. This imparted fresh impulse to sound scientific investigation, which was accompanied by a growing Christian civilization soon to be distinguished by the discovery of a new world. Great was that religious faith which impelled Isabella of Castile, when the assistance of every court in Europe had been refused to Columbus, to place the jewels of her crown in pawn, that, as she said, "more precious jewels might be added to the crown of the King of kings, in the salvation of heathen souls, whose lands the bold navigator might discover and bring under the influence of Christianity." After the discovery of this great continent by Columbus, what other than strong religious love induced the colonization of "New

France," through the instrumentality of its early Christian missionaries and their devoted companions, despite Indian massacres and tortures, and the privations and sufferings of a rigorous climate? What other than earnest and martyr-like religious faith impelled and steered that little barque, "the Mayflower," bearing the Pilgrim sires of New England to its wintry and ice-bound coast, guided the Quaker associates of William Penn to the shores of the Delaware, and led the persecuted Huguenots to the sunny regions of the south Atlantic seaboard? Our happy land was in its earliest settlement, almost throughout its present extent, the refuge and asylum of sincere religious faith ready to encounter every privation and danger for the sake of truth. Religious faith is the corner-stone of our history. The sires of American freedom and liberty were eminently a Christian people. Let that never be forgotten! Their whole history since their respective emigrations to this western hemisphere, proves it. Although of different Christian sects, and presenting essential diversities of religious thought, they yet held to a common faith and love. Their institutions show their firm and unshaken confidence in the Christianity they professed. Their political systems called no man master, save one, and He, the maker and Lord of all things. They recognized the immortality and accountability of the soul, in the equal share of administration of civil government they conferred on every citizen. They trusted to the power of religious truth alone to influence and regulate the actions of society. They rejected in their civil constitutions the great falsehoods which had pressed to earth the great mass of mankind. Divinely delegated prerogative, aristocracy, exclusive

privilege, and civil establishments of the church, were regarded by them as hostile to the best interests of the race.

A strong contrast to such Christian civilization was afforded by the first French revolution, which immediately followed the establishment of the independence of the thirteen American colonies. That revolution was occasioned by pseudo-scientists, termed encyclopedists, who, by reversing the natural order of things, and claiming for science a higher place than religion, instituted a theoretic and practical atheism. It furnished an instance of a fair trial of the value of national atheism for the first time deliberately made by a people enjoying the blessings and advantages bestowed by Christian faith. That experiment gave to all future time an important lesson. It proved the destructive influence of unbelief upon the peace and prosperity of mankind. Hérault de Séchelles, at the head of the French National Convention, had hardly bowed an atheistical knee before an opera dancer called "the Goddess of Reason," and, with profane foolery, sung hymns to a plaster-of-Paris statue termed "the Goddess of Liberty," when the fusillades of Nantes, which shot down in masses hundreds of French citizens, the Noyades of Lyons which drowned scores of men, women and children beneath the hatches of boats, which, at midnight, upon the dark waters of the Rhone, were fiendishly scuttled and sunk; the republican baptisms, as they were mockingly termed, which consisted in binding the sexes together, hands and feet, in pairs, and hurling them into the water to struggle and perish; the Sans-culotte massacres of innocent victims in the public prisons of Paris; the guillotine, by which

alone more than four thousand persons of all ages and both sexes were ruthlessly butchered in a few months in every city, town and hamlet, and France itself turned into a theatre of revelry, rapine and lust, lamentation and woe, each and all exhibited the civilization of atheism enthroned. Even Robespierre, when he made the national convention decree the existence of God and the consolatory principle of the immortality of the soul, celebrated in the Jardin Nationale "his Feast of the Supreme Being," and felt it essential to the preservation of the last vestige of civilization before all law and order had irrevocably fled, that religious belief should be re-established. Atheism worked wonders in France, but they were wonders of murder, rapine and lust. Atheism reigned in France, but its throne was built of skulls, and its presence-chamber was full of dead men's bones.

A very careful view of the state of art and science in the old and new worlds, and especially throughout Christendom, since the close of the last century, up to the present day, will show vast and hitherto unequalled progress, while it exhibits the influence exerted by Christianity upon the pursuits of art and science. Those countries have made the greatest attainments which have most largely enjoyed the advantages of an open Bible, an evangelical ministry, Sunday-schools, Bible classes, institutions of Christian learning and benevolence, a free religious press, liberty of conscience, and other blessings bestowed by the gospel of Christ. If pseudo scientists and philosophers, who have arisen since the decay of the schools of Hume, Gibbon Voltaire, Rousseau, Paine, and the French Encyclopedists, to plague this century with specious infidelity un-

der the names of "Socialism," "Natural Selectivism," "Evolutionism," "Potential Atomism," "Positivism," "Survivalism of the Fittest," "Materialism," "Rationalism," "Humanitarianism," and like "isms," such as Charles Darwin, Auguste Comte, Herbert Spencer, Lange, Professor Huxley, Dr. Tyndall, Stuart Mill and their *confrères*, have rejuvenated from the antique theory of "Potential Matter," broached by old Democritus; the falsehoods they inculcate will perish before the influence of science enlightened and guided by Christian faith. In the light of such illumination, how flimsy is the sophistry which assails the miracles mentioned in the Old and New Testaments as proofs of their divine authenticity and inspiration! Those miracles are recommended to religious belief, not only by the intrinsic evidence of purity and truth afforded by the Holy Scriptures which narrate them, but also by their moral adaptation to the psychological, moral and intellectual organization of man, which æsthetically perceives and acknowledges their reality, appropriateness, invigorating, comforting and purifying power, and that they accord with an enlightened conscience. Religious faith in them cannot be disturbed by the shallow argument, that "a miracle is a deviation from the known laws of nature," and therefore incredible when such a proposition ignores the action of almighty power, having at its disposal infinite means, originating, necessarily controlling, and possibly modifying, for the purposes of moral government, known second causes or physical laws, and employing other physical resources of infinite variety and extent. Such presumptuous sophistry impiously attempts to frame out of a few isolated, partial and imperfectly observed facts, a system of law

and government for an infinite mind and for an infinite universe: "Fools rush in where angels fear to tread." If natural science does observe a manifestation of order, harmony, and continuity of action, in the material universe, which indicate the plan of a divine mind, as the tools lying scattered in and around a great workshop indicate an artificer, and if a rational necessity the dictate of the perception of the moral meaning of the mysteries which surround man postulates a divine mind establishing and maintaining general law; yet such an assumption has no logical bearing upon the special phenomena of miracles or the modes of their production.

A philosophical theory which denies the miracles of the Bible is certainly not in accordance with the inductive philosophy of the great Bacon, nor in harmony with his axiomatic saying that "the imperfect sciences lead away from God, and the perfect sciences lead back to him." Such sophistry is essentially atheistic, because in favor of second causes, termed by it "fixed laws," it is insensible to the moral government of an infinite, eternal, and almighty Supreme Being over an infinite universe of material and moral existence. What would have been the conclusions of the teachers of such false doctrine a few centuries ago concerning the now familiar wonders effected by the forces of electricity, galvanism, magnetism, and caloric? It is also a doubtful philosophy which reverses the natural relations of science to religion, and asserts that because the idea of an infinite, eternal, almighty, omniscient, and omnipresent God cannot be fully comprehended by any finite intellect, therefore God is unknowable, and is not an object of belief or worship to man; and

that what is termed humanitarianism, or the discharge of moral duty toward his fellow, is the only possible religion of man. Such teaching wholly disregards the capacities and aptitudes of the moral and religious organization of man; of his soul, spirit, and intellect, enlightened, purified, and strengthened by the Holy Spirit to know so much of God and his attributes as will satisfy, not his curiosity, but his moral and religious desires and wants, and bestow on him "a peace which passes all understanding." Such teaching also overlooks the fact that God and his attributes are sufficiently revealed, for all needful moral and religious uses and purposes, in the work of creation, in the dealings of daily providence, in the fulfilled prophecies of the Bible, and especially in the person of his Son, "God manifest in the flesh," "God in Christ reconciling the world unto himself,"—the most perfect possible revelation of infinite "love," which is the essential nature of Jehovah. As a musical instrument responds to a master's touch, so does the human soul to the love of God in Christ, when communicated to it by the Holy Spirit.

The same atheistic teachers or pseudo-scientists assert, with equal pertinacity, that the investigations of modern science, especially of geology, paleontology, and comparative anatomy, contradict the biblical account of the creation of man, and of the first ages of the world, rendering such history unworthy of belief. The late Cardinal Wiseman, in his learned, able, and exhaustive lectures before the English College at Rome, on the Evidences of Christianity, has clearly shown that any branch of natural science, in its first crude and imperfect stage, before its facts have been properly

verified and systematically arranged, can readily be enlisted in the ranks of atheistic opposition by the foes of Christianity; but that in every instance of attainment, by the same researches, to the rank and dignity of well-ordered and classified knowledge, such science invariably ranges itself on the side of Christian revelation and belief. If it be asked why Christian faith, thus influencing science, has not effected a perfect civilization, I reply, that whatever civilization is now enjoyed, it is the fruit of Christian science. That Christian truth is, according to God's revealed will, as yet but "a little leaven, which leavens a whole lump" sufficiently to make progress and to serve in fulfilling the divine promise of a day of millennial glory, and complete civilization in the now not far distant future. Christian art and science, like the forerunner of the first advent, seems to be now "making straight the way of the Lord." The discoveries of the mighty forces of electricity, magnetism, galvanism, and caloric, and their application to the telegraph, telephone, the steamer, and the locomotive, are fulfilling the words of Esaias the prophet, saying, "Prepare ye the way of the Lord; make his paths straight; every valley shall be filled, and every mountain and hill shall be brought low, and the crooked shall be made straight, and the rough ways shall be made smooth, and all flesh shall see the salvation of God." The military powers of the earth are now fully armed for a strife, and a casual circumstance may, at any time, light up the flames of a general conflagration. The long-pending conflict between good and evil on this earth, appears to be attaining a climax.

Nevertheless, during these days of the present dis-

compensation, much remains to be accomplished (as helping on the promised perfect civilization of mankind) by Christian faith and law, operating through a salutary influence on art and science. The sole inquiry of those who have heretofore labored in this great field of pious benevolence, has been, What is truth? They, in their own age, have obtained many satisfactory responses to this inquiry. But, as it is an infinite question belonging to moral beings, and will ever receive from the great moral Governor of the universe important and valuable answers, our predecessors have transmitted this question to us. It is our high privilege and solemn duty to sacredly regard this question, to preserve the treasures of religious, scientific and political truth transmitted to us, and to enlarge them by our own acquisitions in the same field of inquiry. We should be most anxious to discern and separate, in every investigation, reality from illusion, truth from falsehood. If we are faithful to the great trust reposed in us, we, and those who come after us in this broad land, may witness such wonders of civilization as have never yet been beheld. As successive millions of freemen cover a widely extended territory from the shores which are beaten by the stormy Atlantic and visited by the first rays of the rising sun, to those which are gently laved by the calm Pacific, upon which the setting luminary of day casts his evening glories, the universal diffusion of religious truth and correct science will exhibit in the consequent establishment of social peace, order and harmony, a solution of this great problem of human civilization, entirely purified from iniquity and eminently Christian in all its features.

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